

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY W. BAKER,

Plaintiff,

No. 2:10-cv-1811 KJN P

vs.

SGT. CAMERON, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a county jail inmate proceeding without counsel and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. By order filed August 12, 2010, plaintiff's complaint was dismissed with leave to file an amended complaint. Plaintiff has now filed an amended complaint.

As plaintiff was previously advised, the court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a); August 12, 2010 Order at 1.

Plaintiff alleges that "Solano County Jail employees" are violating his Eighth Amendment rights by not providing adequate dental care and dental care products which caused him to suffer "unnecessary pain from a gum infection for weeks." (Am. Compl. at 3.) Plaintiff then provided a list of named defendants and claimed they "have all either responded to [his]

1 grievances or been made aware of my situation and did nothing to remedy it.” (Id.)

2 First, the allegation that named defendants “responded to grievances” does not  
3 state a claim upon which relief may be granted against any defendant. There is no constitutional  
4 right to a prison or jail administrative appeal or grievance system in California. See Ramirez v.  
5 Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (no liberty interest in processing of appeals because no  
6 entitlement to a specific grievance procedure); Mann v. Adams, 855 F.2d 639, 640 (9th Cir.  
7 1988); Cal.Code Regs. tit. 15, §§ 3084.1, 3084.1(d). Responding to an inmate grievance does  
8 not provide a basis for liability.

9 Second, as plaintiff was previously informed, plaintiff must allege how each  
10 defendant allegedly violated plaintiff’s constitutional rights. (August 12, 2010 Order at 3.)  
11 Deliberate indifference to a prisoner's serious medical needs violates the Eighth Amendment's<sup>1</sup>  
12 proscription against cruel and unusual punishment. See Estelle v. Gamble, 429 U.S. 97, 102-04  
13 (1976). Serious medical needs may include dental care needs. See Hunt v. Dental Dep't, 865  
14 F.2d 198, 200 (9th Cir. 1989) (dental care important medical need of inmates). To prove that the  
15 response of prison officials to a prisoner's medical needs was constitutionally deficient, the  
16 prisoner must establish: 1) a serious medical need, and 2) deliberate indifference to that need by  
17 prison officials. See McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992), overruled on  
18 other grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en  
19 banc).

20 A prison official does not act in a deliberately indifferent manner unless the  
21 official “knows of and disregards an excessive risk to inmate health or safety.” Farmer v.  
22 Brennan, 511 U.S. 825, 834 (1994). Deliberate indifference may be shown when an official

---

23 <sup>1</sup> It is not clear whether plaintiff was a convicted prisoner or was a pre-trial detainee  
24 awaiting his criminal trial when the events in his complaint took place. While the Eighth  
25 Amendment's prohibition against cruel and unusual punishment only protects convicted  
26 prisoners, Bell v. Wolfish, 441 U.S. 520, 535 (1979), the rights of pre-trial detainees under the  
Due Process Clause are analyzed using the same standards as the rights of convicted prisoners  
under the Eighth Amendment, Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

1 denies, delays, or intentionally interferes with treatment or by the way that a medical professional  
2 provides care. Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006). Where a prisoner is alleging  
3 a delay in receiving medical or dental treatment, the delay must have led to further harm in order  
4 for the prisoner to make a claim of deliberate indifference to serious medical needs. McGuckin,  
5 974 F.2d at 1060 (citing Shapely v. Nevada Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th  
6 Cir. 1985)). Mere negligence is insufficient for Eighth Amendment liability. Frost, 152 F.3d at  
7 1128.

8           In the amended complaint, plaintiff has failed to allege facts that demonstrate each  
9 defendant was deliberately indifferent to his serious medical needs. See Hunt, 865 F.2d at 200  
10 (explaining that prisoners can establish an Eighth Amendment violation with respect to dental  
11 care if they can prove there has been deliberate indifference to their serious dental needs). The  
12 grievances appended to plaintiff's complaint state that plaintiff "requested to see dental in April  
13 and was not seen until July 20th." (Am. Compl. at 5-7; 9.) It is not sufficient to allege that a  
14 defendant knew plaintiff wanted dental care and did nothing. Plaintiff must demonstrate that the  
15 named defendant had a culpable state of mind; that is, the defendant was aware of the facts from  
16 which an inference could be drawn that a substantial risk of serious harm existed, and that the  
17 named defendant also drew that inference. Farmer, 511 U.S. at 837. Moreover, even if  
18 defendants were directly responsible for delaying the receipt of plaintiff's dental care, plaintiff  
19 has failed to allege sufficient facts that the delay in receiving dental care caused him further  
20 significant harm. Delay alone does not state a claim for deliberate indifference. Hunt, 865 F.2d  
21 at 200; Shapely, 766 F.2d at 407.

22           Third, plaintiff has named Solano County as one of the defendants. The Eleventh  
23 Amendment serves as a jurisdictional bar to suits brought by private parties against a state or  
24 state agency unless the state or the agency consents to such suit. See Quern v. Jordan, 440 U.S.  
25 332 (1979); Jackson v. Hayakawa, 682 F.2d 1344, 1349-50 (9th Cir. 1982). In the instant case,  
26 Solano County has not consented to suit. Accordingly, plaintiff's claims against Solano County

1 are frivolous and must be dismissed.

2           Finally, plaintiff seeks a court order requiring the Solano County Jail to “provide  
3 all inmates with adequate dental care.” (Am. Compl. at 3.) Plaintiff is reminded that this action  
4 is not proceeding as a class action. (August 12, 2010 at 3.) Plaintiff may only seek relief on his  
5 own behalf.

6           The court finds the allegations in plaintiff's amended complaint so vague and  
7 conclusory that it is unable to determine whether the current action is frivolous or fails to state a  
8 claim for relief. The court has determined that the amended complaint does not contain a short  
9 and plain statement as required by Federal Rule of Civil Procedure 8(a)(2). Although the Federal  
10 Rules adopt a flexible pleading policy, a complaint must give fair notice and state the elements of  
11 the claim plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th  
12 Cir. 1984). Plaintiff must allege with at least some degree of particularity overt acts which  
13 defendants engaged in that support plaintiff's claim. Id. Because plaintiff has failed to comply  
14 with the requirements of Fed. R. Civ. P. 8(a)(2), the amended complaint must be dismissed. The  
15 court will, however, grant leave to file a second amended complaint.

16           If plaintiff chooses to file a second amended complaint, plaintiff must demonstrate  
17 how the conditions complained of have resulted in a deprivation of plaintiff's constitutional  
18 rights, and allege in specific terms how each named defendant is involved. There can be no  
19 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a  
20 defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Plaintiff  
21 must show that the named defendants knew of and disregarded a serious risk to his health and  
22 deprived him of the “minimal civilized measure of life's necessities.” Farmer, 511 U.S. at 834.  
23 Plaintiff should refrain from including Solano County as a named defendant in any second  
24 amended complaint.

25           In addition, plaintiff is informed that the court cannot refer to a prior pleading in  
26 order to make plaintiff's second amended complaint complete. Local Rule 220 requires that an


1 amended complaint be complete in itself without reference to any prior pleading. This is  
2 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.  
3 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files a second amended complaint, the  
4 original pleading no longer serves any function in the case. Therefore, in a second amended  
5 complaint, as in an original complaint, each claim and the involvement of each defendant must  
6 be sufficiently alleged.

7 In accordance with the above, IT IS HEREBY ORDERED that:

- 8 1. Plaintiff's amended complaint is dismissed; and
- 9 2. Within thirty days from the date of this order, plaintiff shall complete the  
10 attached Notice of Amendment and submit the following documents to the court:

- 11 a. The completed Notice of Amendment; and
  - 12 b. An original and one copy of the Second Amended Complaint.
- 13 Plaintiff's second amended complaint shall comply with the requirements of the Civil Rights  
14 Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice; the second amended  
15 complaint must bear the docket number assigned this case and must be labeled "Second  
16 Amended Complaint"; failure to file a second amended complaint in accordance with this order  
17 may result in the dismissal of this action.

18 DATED: September 23, 2010

19  
20  
21   
22 KENDALL J. NEWMAN  
23 UNITED STATES MAGISTRATE JUDGE

24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
bake1811.14b

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY W. BAKER,

Plaintiff,

No. 2:10-cv-1811 KJN P

vs.

SGT. CAMERON, et al.,

NOTICE OF AMENDMENT

Defendants.

\_\_\_\_\_ /

Plaintiff hereby submits the following document in compliance with the court's  
order filed \_\_\_\_\_:

\_\_\_\_\_ Second Amended Complaint

DATED:

\_\_\_\_\_  
Plaintiff