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

TAUNO A. KOIVISTO, III,

Plaintiff,
vs.

No. 2:12-cv-0772 EFB P

JIMMY WALKER, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se with this civil rights action under 42 U.S.C. § 1983. In addition to filing a complaint, plaintiff has filed an application to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

I. Request to Proceed In Forma Pauperis

Plaintiff has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Dckt. No. 2. Plaintiff’s application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

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1 **II. Screening Requirement and Standards**

2 Federal courts must engage in a preliminary screening of cases in which prisoners seek
3 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
4 § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion
5 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which
6 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
7 relief.” *Id.* § 1915A(b).

8 In order to avoid dismissal for failure to state a claim a complaint must contain more than
9 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
10 of action.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-557 (2007). In other words,
11 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
12 statements do not suffice.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009).

13 Furthermore, a claim upon which the court can grant relief has facial plausibility.
14 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
15 content that allows the court to draw the reasonable inference that the defendant is liable for the
16 misconduct alleged.” *Iqbal*, 129 S. Ct. at 1949. When considering whether a complaint states a
17 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
18 *Pardus*, 127 S. Ct. 2197, 2200 (2007), and construe the complaint in the light most favorable to
19 the plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

20 A *pro se* plaintiff must satisfy the pleading requirements of Rule 8(a) of the Federal
21 Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and plain
22 statement of the claim showing that the pleader is entitled to relief, in order to give the defendant
23 fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*,
24 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

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1 **III. Screening Order**

2 Pursuant to § 1915A, the court has reviewed plaintiff’s complaint and finds that it must
3 be dismissed because it does not comply with Rule 8 or state a claim upon which relief may be
4 granted.

5 Rule 8 rule requires the pleader to set forth his averments in a simple, concise, and direct
6 manner. Aside from the section of the complaint listing the parties, the complaint consists of a
7 single paragraph, hand-written and single spaced, spanning 43 pages. The allegations are so
8 vague and conclusory that the court cannot determine where one alleged incident giving rise to a
9 claim stops and another begins. As drafted, the complaint hardly provides defendants with “fair
10 notice” of plaintiff’s claims against them. Rather than submitting a “short and plain statement”
11 of his claims, plaintiff has submitted a complaint that is so prolix and convoluted that the court
12 cannot reasonably discharge its screening responsibility under § 1915A. Plaintiff must therefore
13 file an amended complaint that complies with the pleading requirements set forth in Rule 8. *See*
14 *McNeil v. United States*, 508 U.S. 106, 113 (1993) (federal rules apply to all litigants, including
15 prisoners lacking access to counsel); *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998)
16 (encouraging “firm application” of federal rules in prisoner cases); *McHenry v. Renne*, 84 F.3d
17 1172, 1177-78 (9th Cir. 1996) (affirming Rule 8 dismissal of complaint that was “argumentative,
18 prolix, replete with redundancy, and largely irrelevant” and providing an example of a properly-
19 pleaded claim, which could be “read in seconds and answered in minutes”). Although the
20 Federal Rules adopt a flexible pleading policy, a complaint must give fair notice and state the
21 elements of the claim plainly and succinctly. *Jones v. Community Redev. Agency*, 733 F.2d 646,
22 649 (9th Cir. 1984). In an amended complaint, plaintiff need only provide a short and plain
23 statement of his claim(s) showing that he is entitled to relief.

24 Should plaintiff choose to file an amended complaint, the amended complaint must
25 clearly set forth the claims and allegations against each defendant. It must also adhere to the
26 following requirements:

1 The amended complaint must be written or typed so that it is complete in itself without
2 reference to any earlier filed complaint. L.R. 220. This is because an amended complaint
3 supersedes any earlier filed complaint, and once an amended complaint is filed, the earlier filed
4 complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114 F.3d 1467,
5 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter being treated
6 thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)). Any
7 amended complaint may not change the nature of this suit by alleging new, unrelated claims.
8 *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

9 The complaint must identify as a defendant only persons who personally participated in a
10 substantial way in depriving plaintiff of a federal constitutional right. *Johnson v. Duffy*, 588
11 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional
12 right if he does an act, participates in another’s act or omits to perform an act he is legally
13 required to do that causes the alleged deprivation).

14 It must also contain a caption including the name of the court and the names of all
15 parties. Fed. R. Civ. P. 10(a).

16 It appears that plaintiff intends to file this lawsuit on behalf of other inmates. *See* Dckt.
17 No. 1 at 1 (listing names of additional plaintiffs). However, an inmate who is not a lawyer
18 cannot represent other inmates in court. *See Johns v. County of San Diego*, 114 F.3d 874, 876
19 (9th Cir. 1997); *C.E. Pope Equity Trust v. U.S.*, 818 F.2d 696, 697 (9th Cir. 1987) (non-attorney
20 has a right to appear pro se on his own behalf, but “has no authority to appear as an attorney for
21 others”). In an amended complaint, plaintiff may not bring claims on behalf of anyone but
22 himself.

23 Because it appears that plaintiff intends to state claims based on deliberate indifference to
24 medical needs or based on the mishandling of his administrative appeals, the court also informs
25 plaintiff of the following legal standards:

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1 To state a claim pursuant to § 1983, a plaintiff must allege: (1) the violation of a federal
2 constitutional or statutory right; and (2) that the violation was committed by a person acting
3 under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

4 An individual defendant is not liable on a civil rights claim unless the facts establish the
5 defendant's personal involvement in the constitutional deprivation or a causal connection
6 between the defendant's wrongful conduct and the alleged constitutional deprivation. *See*
7 *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th
8 Cir. 1978). That is, plaintiff may not sue any official on the theory that the official is liable for
9 the unconstitutional conduct of his or her subordinates. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1948
10 (2009). Because respondeat superior liability is inapplicable to § 1983 suits, "a plaintiff must
11 plead that each Government- official defendant, through the official's own individual actions,
12 has violated the Constitution." *Id.* It is plaintiff's responsibility to allege facts to state a
13 plausible claim for relief. *Iqbal*, 129 S. Ct. at 1949; *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969
14 (9th Cir. 2009).

15 To state a claim for violation of the Eighth Amendment based on inadequate medical
16 care, plaintiff must allege "acts or omissions sufficiently harmful to evidence deliberate
17 indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). To prevail,
18 plaintiff must show both that his medical needs were objectively serious, and that defendant
19 possessed a sufficiently culpable state of mind. *Wilson v. Seiter*, 501 U.S. 294, 297-99 (1991);
20 *McKinney v. Anderson*, 959 F.2d 853, 854 (9th Cir. 1992). A serious medical need is one that
21 significantly affects an individual's daily activities, an injury or condition a reasonable doctor or
22 patient would find worthy of comment or treatment, or the existence of chronic and substantial
23 pain. *See, e.g., McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992), *overruled on other*
24 *grounds by WMX Techs. v. Miller*, 104 F.2d 1133, 1136 (9th Cir.1997) (*en banc*). It is important
25 to differentiate common law negligence claims of malpractice from claims predicated on
26 violations of the Eight Amendment's prohibition of cruel and unusual punishment. In asserting

1 the latter, “[m]ere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this
2 cause of action.” *Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir. 1980) (citing
3 *Estelle v. Gamble*, 429 U.S. 97, 105-106 (1976); *see also Toguchi v. Chung*, 391 F.3d 1051,
4 1057 (9th Cir. 2004). Moreover, it is well established that mere differences of opinion
5 concerning the appropriate treatment cannot be the basis of an Eighth Amendment violation.
6 *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996); *Franklin v. Oregon*, 662 F.2d 1337, 1344
7 (9th Cir. 1981).

8 There are no constitutional requirements regarding how a grievance system is operated.
9 *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (holding that prisoner’s claimed loss
10 of a liberty interest in the processing of his appeals does not violate due process because
11 prisoners lack a separate constitutional entitlement to a specific prison grievance system).

12 **IV. Order**

13 Accordingly, the court hereby orders that:

14 1. Plaintiff’s request to proceed in forma pauperis (Dckt. No. 2) is granted.

15 2. The complaint is dismissed with leave to amend within 30 days. The amended
16 complaint must bear the docket number assigned to this case and be titled “First Amended
17 Complaint.” Failure to comply with this order will result in a recommendation that this action be
18 dismissed. If plaintiff files an amended complaint stating a cognizable claim the court will
19 proceed with service of process by the United States Marshal.

20 Dated: August 2, 2012.

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22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
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