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

VINCENT E. COFIELD,

Plaintiff,

No. 2:12-cv-3060 EFB P

vs.

UNKNOWN,

Defendant.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se with this civil rights action under 42 U.S.C. § 1983. Plaintiff commenced this action with a letter, but asks that the letter be construed as a complaint. Dckt. Nos. 1, 4. In addition, plaintiff has filed an application to proceed in forma pauperis.

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. 5. 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 Order**

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)).

25 Here, plaintiff’s letter does not identify any defendants or claims for relief. Rather, it
26 complains generally about plaintiff’s breathing problems and the medical department at High

1 Desert State Prison. The letter does not include a request for relief. Instead, plaintiff writes, “I
2 am not sure if at all what you can do about my matter, but I just have to keep trying to contact
3 someone who can. Asthma runs in my family, in 2007 I lost my lil sister to an asthma attack,
4 and I am afraid the same will happen to me if I don’t get off this mountain were the air is thin,
5 and there are so many fires. It’s bad for both my asthma and my COPD, high blood pressure and
6 allergies.” Dckt. No. 1 at 3.

7 Construing plaintiff’s letter as a complaint, the court finds, pursuant to § 1915A, that the
8 allegations are too vague to state a cognizable claim for relief. Although the Federal Rules adopt
9 a flexible pleading policy, a complaint must give fair notice and state the elements of the claim
10 plainly and succinctly. *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984).
11 Plaintiff must allege with at least some degree of particularity overt acts which defendants
12 engaged in that support plaintiff’s claim. *Id.* Because plaintiff fails to plausibly state a claim for
13 relief, the complaint must be dismissed. The court will, however, grant leave to file an amended
14 complaint.

15 Plaintiff will be granted leave to file an amended complaint, if plaintiff can allege a
16 cognizable legal theory against a proper defendant and sufficient facts in support of that
17 cognizable legal theory. *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
18 (district courts must afford pro se litigants an opportunity to amend to correct any deficiency in
19 their complaints). Should plaintiff choose to file an amended complaint, the amended complaint
20 shall clearly set forth the claims and allegations against each defendant. Any amended
21 complaint must cure the deficiencies identified above and also adhere to the following
22 requirements:

23 Any amended complaint must identify as a defendant only persons who personally
24 participated in a substantial way in depriving him of a federal constitutional right. *Johnson v.*
25 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a
26 constitutional right if he does an act, participates in another’s act or omits to perform an act he is

1 legally required to do that causes the alleged deprivation). It must also contain a caption
2 including the names of all defendants. Fed. R. Civ. P. 10(a).

3 Any amended complaint must be written or typed so that it so that it is complete in itself
4 without reference to any earlier filed complaint. L.R. 220. This is because an amended
5 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
6 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
7 F.3d 1467, 1474 (9th Cir. 1997) (the ““amended complaint supersedes the original, the latter
8 being treated thereafter as non-existent.””) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
9 1967)).

10 Plaintiff may not change the nature of this suit by alleging new, unrelated claims in an
11 amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot”
12 complaints).

13 The court hereby informs plaintiff of the requirements for stating an Eighth Amendment
14 claim pursuant to 42 U.S.C. § 1983, based on alleged deliberate indifference to his medical
15 needs:

16 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:
17 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that
18 the alleged violation was committed by a person acting under the color of state law. *West v.*
19 *Atkins*, 487 U.S. 42, 48 (1988).

20 An individual defendant is not liable on a civil rights claim unless the facts establish the
21 defendant’s personal involvement in the constitutional deprivation or a causal connection
22 between the defendant’s wrongful conduct and the alleged constitutional deprivation. *See*
23 *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th
24 Cir. 1978). Plaintiff may not sue any official on the theory that the official is liable for the
25 unconstitutional conduct of his or her subordinates. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1948
26 (2009). Rather, a plaintiff must plead that each defendant, through his own individual actions,

1 has violated the Constitution. *Id.* It is plaintiff's responsibility to allege facts to state a plausible
2 claim for relief. *Iqbal*, 129 S. Ct. at 1499; *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.
3 2009).

4 The Eighth Amendment protects prisoners from inhumane methods of punishment and
5 from inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir.
6 2006). Prison officials have a duty to ensure that prisoners are provided adequate shelter, food,
7 clothing, sanitation, medical care, and personal safety. *Johnson v. Lewis*, 217 F.3d 726, 731 (9th
8 Cir. 2000). Extreme deprivations are required to make out a conditions of confinement claim,
9 and only those deprivations denying the minimal civilized measure of life's necessities are
10 sufficiently grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*,
11 503 U.S. 1, 9 (1992). To succeed on such a claim, a prisoner must show that (1) the defendant's
12 conduct deprived him of the minimal civilized measure of life's necessities and (2) that the
13 defendant acted with deliberate indifference to the prisoner's health or safety. *Farmer v.*
14 *Brennan*, 511 U.S. 825, 834 (1994). That is, the defendant must have known that the inmate
15 faced a substantial risk of serious harm, and must have also disregarded that risk by failing to
16 take reasonable measures to abate it. *Id.* at 847.

17 To succeed on an Eighth Amendment claim predicated on the denial of medical care, a
18 plaintiff must establish that he had a serious medical need and that the defendant's response to
19 that need was deliberately indifferent. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006); *see*
20 *also Estelle v. Gamble*, 429 U.S. 97, 106 (1976). A serious medical need is one that significantly
21 affects an individual's daily activities, an injury or condition a reasonable doctor or patient
22 would find worthy of comment or treatment, or the existence of chronic and substantial pain.
23 *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 Eighth 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 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff’s request to proceed *in forma pauperis* (Dckt. No. 5) is granted.
- 10 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in
11 accordance with the notice to the California Department of Corrections and Rehabilitation filed
12 concurrently herewith.
- 13 3. The complaint is dismissed with leave to amend within 30 days. The amended
14 complaint must bear the docket number assigned to this case and be titled “First Amended
15 Complaint.” Failure to comply with this order may result in a recommendation that this action
16 be dismissed.

17 Dated: March 4, 2013.

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EDMUND F. BRENNAN
19 UNITED STATES MAGISTRATE JUDGE
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