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

RICHARD V. ROOD,
Plaintiff,

No. 2:13-cv-0478-CMK-P

vs.

ORDER

GARY SWARTHOUT, et al.,
Defendant.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s complaint (Doc. 1), motion for ruling (Doc. 25) and motion for service (Doc. 26).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the

1 complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it
2 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege
3 with at least some degree of particularity overt acts by specific defendants which support the
4 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
5 impossible for the court to conduct the screening required by law when the allegations are vague
6 and conclusory.

7 I. PLAINTIFF'S ALLEGATIONS

8 Plaintiff alleges the defendants failed to provide him adequate medical treatment
9 in relation to an ACL tear and complication following surgery. More specifically, plaintiff
10 alleges that he was diagnosed with an ACL tear while in the Shasta County Jail, was placed on
11 Norco and Levil for pain, but was told treatment would have to wait until he arrived at the
12 facility he was endorsed to. Upon arrival at into High Desert State Prison, medical staff took him
13 off the Norco and Levil, and ordered ibuprofen which was not sufficient to deal with his pain.
14 Presumably upon transfer to California State Prison Solano (CSP Solano), in January 2011, Dr.
15 Win increased the prescription of ibuprofen, but refused to prescribe Norco. The ibuprofen was
16 insufficient. In March 2011, Dr. Win prescribed naproxen, which was also insufficient. Plaintiff
17 then fell off his top bunk, and x-rays were ordered. Dr. Waters read the x-rays and determined it
18 was negative for damage. However, an MRI done in May 2011 showed a tear. Plaintiff
19 continued to request pain medication, but the medical staff thought Plaintiff was faking the pain.

20 Plaintiff had surgery on his knee in October 2011. He was then transported back
21 to prison right after and was in significant pain when he arrived. The surgeon had ordered pain
22 medication and a pillow to elevate his knee, but he never received. Upon arrival back at prison,
23 Plaintiff was given morphine sulphate; the nurse refused to given him more oxycotin as the
24 surgeon had. Plaintiff then went "man down" due to pain, and he was given a shot of Toradol.
25 The nurse was rude, and falsely accused him of "cheeking" narcotics. However, plaintiff was not
26 on any narcotics on October 1, 2011. Based on that false accusation, on October 16, 2011,

1 Plaintiff's prescription for morphine sulphate was canceled. On October 20, 2011, Dr. Ramos
2 put him back on morphine sulphate for three more days. However, Dr. Shadday took him off the
3 morphine and put him on tramadol. Dr. Shadday threatened to write Plaintiff up if he requested
4 any more pain medication. Medical staff had become bias against Plaintiff. Plaintiff continued
5 to complain about his pain, not receiving a knee pillow, and that his knee did not feel right.

6 On November 11, 2011, RN Smith refused Plaintiff's request to be seen by a doctor. Dr.
7 Win increased his tramadol amount after Plaintiff filed a 602 inmate grievance. Defendant
8 McAlpine denied the 602. On November 17, 2011, Dr. Lee interviewed Plaintiff regarding the
9 602, which was denied.

10 In April 2012, Plaintiff was in administrative segregation, and Dr. Tan was assigned as
11 his primary care doctor. On April 30, 2012, he noticed a loose body in his knee and showed RN
12 Lahey. This became more painful. On May 25, 2012, he requested better shoes from Dr. Tan,
13 who refused to give plaintiff a soft shoes chrono as it would not be honored in administrative
14 segregation. Dr. Tan ordered Plaintiff shoe insoles instead, which were received in August but
15 were not the right ones so plaintiff refused them.

16 On August 1, 2012, plaintiff had additional x-rays on his knee, which showed no
17 damage. On August 4, 2012, plaintiff went "man down" again due to pain. He saw the same
18 rude nurse, and was given a shot of Toradol. On August 6, 2012, Plaintiff saw Dr. Tan for pain
19 and swelling in his knee. Plaintiff requested a follow up with the surgeon. However, plaintiff
20 did see the surgeon on August 24, 2012, and the surgeon ordered an MRI. Dr. Tan refused the
21 MRI on August 27, 2012. From August until November 2012, plaintiff was seen several times
22 for pain. On November 6, 2012, Plaintiff finally had an MRI done which showed a loose body in
23 his knee. This was removed on January 23, 2013.

24 25 **II. DISCUSSION**

26 Plaintiff's complaint suffers from several defects.

1 A. Failure to Link

2 To state a claim under 42 U.S.C. § 1983, the plaintiff must allege an actual
3 connection or link between the actions of the named defendants and the alleged deprivations.
4 See Monell v. Dep't of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
5 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
6 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts, or
7 omits to perform an act which he is legally required to do that causes the deprivation of which
8 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and
9 conclusory allegations concerning the involvement of official personnel in civil rights violations
10 are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Rather, the
11 plaintiff must set forth specific facts as to each individual defendant’s causal role in the alleged
12 constitutional deprivation. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

13 There are several individuals plaintiff has identified as defendants, but he fails to
14 allege any facts showing these individuals were involved in any manner in the denial of medical
15 care, including Hsieh, Kotarek, Collins, Dingcong, Andres, Lafagan, Hardman, Fontillas, Herhst,
16 Acosta, and Espine. These individuals are not mentioned at all in the body of the complaint.
17 While this defect is subject to cure, plaintiff is advised to be mindful of what is required to state a
18 claim for a violation of the Eighth Amendment as set forth below. Only those individuals
19 directly involved with his claims of the denial of necessary medical care may be held liable.

20 B. Supervisory Defendant

21 Supervisory personnel are generally not liable under § 1983 for the actions of their
22 employees. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that there is no
23 respondeat superior liability under § 1983). A supervisor is only liable for the constitutional
24 violations of subordinates if the supervisor participated in or directed the violations. See id. The
25 Supreme Court has rejected the notion that a supervisory defendant can be liable based on
26 knowledge and acquiescence in a subordinate’s unconstitutional conduct because government

1 officials, regardless of their title, can only be held liable under § 1983 for his or her own conduct
2 and not the conduct of others. See Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009). Supervisory
3 personnel who implement a policy so deficient that the policy itself is a repudiation of
4 constitutional rights and the moving force behind a constitutional violation may, however, be
5 liable even where such personnel do not overtly participate in the offensive act. See Redman v.
6 Cnty of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc).

7 When a defendant holds a supervisory position, the causal link between such
8 defendant and the claimed constitutional violation must be specifically alleged. See Fayle v.
9 Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir.
10 1978). Vague and conclusory allegations concerning the involvement of supervisory personnel
11 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th
12 Cir. 1982). “[A] plaintiff must plead that each Government-official defendant, through the
13 official’s own individual actions, has violated the constitution.” Iqbal, 662 U.S. at 676.

14 Here, Plaintiff names Warden Swarthout as a defendant in this action. However,
15 the only allegations against Warden Swarthout is that he is legally responsible for the operation
16 of the prison and the welfare of the inmates. There are no facts alleged that he was personally
17 involved in any of the violations alleged. Thus, it appears appropriate to dismiss Warden
18 Swarthout as a defendant to this action.

19 C. Inmate Grievance

20 Prisoners have no stand-alone due process rights related to the administrative
21 grievance process. See Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988); see also Ramirez v.
22 Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (holding that there is no liberty interest entitling
23 inmates to a specific grievance process). Because there is no right to any particular grievance
24 process, it is impossible for due process to have been violated by ignoring or failing to properly
25 process grievances. Numerous district courts in this circuit have reached the same conclusion.
26 See Smith v. Calderon, 1999 WL 1051947 (N.D. Cal 1999) (finding that failure to properly

1 process grievances did not violate any constitutional right); Cage v. Cambra, 1996 WL 506863
2 (N.D. Cal. 1996) (concluding that prison officials' failure to properly process and address
3 grievances does not support constitutional claim); James v. U.S. Marshal's Service, 1995 WL
4 29580 (N.D. Cal. 1995) (dismissing complaint without leave to amend because failure to process
5 a grievance did not implicate a protected liberty interest); Murray v. Marshall, 1994 WL 245967
6 (N.D. Cal. 1994) (concluding that prisoner's claim that grievance process failed to function
7 properly failed to state a claim under § 1983). Prisoners do, however, retain a First Amendment
8 right to petition the government through the prison grievance process. See Bradley v. Hall, 64
9 F.3d 1276, 1279 (9th Cir. 1995). Therefore, interference with the grievance process may, in
10 certain circumstances, implicate the First Amendment.

11 In this case, plaintiff alleges Drs. McAlpine and Lee denied a 602 inmate
12 grievance. However, the only allegations related to these two defendants are in relation to their
13 actions adjudicating the inmate grievance. There is no indication in the complaint that either of
14 these doctors were personally involved in any of plaintiff's medical treatment. As such, it does
15 not appear that plaintiff can state a claim against either physician.

16 D. Medical Treatment

17 The treatment a prisoner receives in prison and the conditions under which the
18 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel
19 and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan,
20 511 U.S. 825, 832 (1994). The Eighth Amendment "embodies broad and idealistic concepts of
21 dignity, civilized standards, humanity, and decency." Estelle v. Gamble, 429 U.S. 97, 102
22 (1976). Conditions of confinement may, however, be harsh and restrictive. See Rhodes v.
23 Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with
24 "food, clothing, shelter, sanitation, medical care, and personal safety." Toussaint v. McCarthy,
25 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only
26 when two requirements are met: (1) objectively, the official's act or omission must be so serious

1 such that it results in the denial of the minimal civilized measure of life's necessities; and (2)
2 subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of
3 inflicting harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison
4 official must have a "sufficiently culpable mind." See id.

5 Deliberate indifference to a prisoner's serious illness or injury, or risks of serious
6 injury or illness, gives rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at
7 105; see also Farmer, 511 U.S. at 837. This applies to physical as well as dental and mental
8 health needs. See Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). An injury or illness is
9 sufficiently serious if the failure to treat a prisoner's condition could result in further significant
10 injury or the "unnecessary and wanton infliction of pain." McGuckin v. Smith, 974 F.2d 1050,
11 1059 (9th Cir. 1992); see also Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994).

12 Factors indicating seriousness are: (1) whether a reasonable doctor would think that the condition
13 is worthy of comment; (2) whether the condition significantly impacts the prisoner's daily
14 activities; and (3) whether the condition is chronic and accompanied by substantial pain. See
15 Lopez v. Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000) (en banc).

16 The requirement of deliberate indifference is less stringent in medical needs cases
17 than in other Eighth Amendment contexts because the responsibility to provide inmates with
18 medical care does not generally conflict with competing penological concerns. See McGuckin,
19 974 F.2d at 1060. Thus, deference need not be given to the judgment of prison officials as to
20 decisions concerning medical needs. See Hunt v. Dental Dep't, 865 F.2d 198, 200 (9th Cir.
21 1989). The complete denial of medical attention may constitute deliberate indifference. See
22 Toussaint v. McCarthy, 801 F.2d 1080, 1111 (9th Cir. 1986). Delay in providing medical
23 treatment, or interference with medical treatment, may also constitute deliberate indifference.
24 See Lopez, 203 F.3d at 1131. Where delay is alleged, however, the prisoner must also
25 demonstrate that the delay led to further injury. See McGuckin, 974 F.2d at 1060.

26 Negligence in diagnosing or treating a medical condition does not, however, give

1 rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 106. Moreover, a
2 difference of opinion between the prisoner and medical providers concerning the appropriate
3 course of treatment does not give rise to an Eighth Amendment claim. See Jackson v. McIntosh,
4 90 F.3d 330, 332 (9th Cir. 1996).

5 As set forth above, Plaintiff alleges defendants Win, Tan, Waters, Ramos, Smith,
6 and Shadday were each involved in some manner of his medical treatment. However, plaintiff
7 specifically alleges the medical personnel committed malpractice and were negligent in their
8 dealings with plaintiff. To that extent, such allegations are insufficient to state a claim under §
9 1983. In order to state a claim for violation of the Eighth Amendment, plaintiff has to allege the
10 defendants were deliberately in different to his medical needs. Negligence and malpractice are
11 not enough. From the facts alleged in the complaint in general, it appears that plaintiff was
12 unsatisfied with the medical treatment he received relating to his knee. However, it is a stretch to
13 see anything more than negligence or malpractice in the actions alleged.

14 More specifically, plaintiff contends Dr. Waters erroneously read x-rays as
15 negative for damage, when a later MRI showed a tear in his ACL. However, plaintiff fails to
16 allege Dr. Waters was deliberately indifferent to plaintiff's medical needs. At best, plaintiff's
17 allegations could constitute negligence or malpractice, but there is nothing in the complaint to
18 indicate Dr. Waters deliberately misread the x-rays in order to violate plaintiff's Eighth
19 Amendment rights.

20 Similarly, plaintiff's allegations against Dr. Win indicate that he disagreed with
21 the treatment Dr. Win provided, not that Dr. Win refused to provide treatment to plaintiff. The
22 allegations indicate that plaintiff wanted additional pain medication that Dr. Win refused to
23 prescribe. However, there are no allegations that Dr. Win refused to provide plaintiff with any
24 pain medication. In fact, it is clear from the allegations in the complaint that as plaintiff
25 continued to complain about pain and inadequate pain treatment, Dr. Win increased the pain
26 medication prescribed and tried alternative medications. Again, the allegations against Dr. Win

1 could only amount to perhaps negligence or malpractice, not an Eighth Amendment violation.

2 As to Drs. Ramos and Shadday, plaintiff's only allegations against these two
3 doctors relate to the medications they prescribed. Plaintiff alleged that Dr. Ramos prescribed
4 morphine sulphate for three days after his prior prescription was canceled by an unnamed person
5 based on allegedly false accusations. It is unclear how Dr. Ramos giving plaintiff the medication
6 he was requesting, albeit for a short time, could rise to an Eighth Amendment violation for
7 deliberate indifference. It appears that Dr. Ramos was not plaintiff's primary care provider.
8 Thus, only allowing a prescription for three days would not be a denial of treatment. Similarly,
9 plaintiff alleges Dr. Shadday took him off morphine sulphate, but started him on an alternative
10 pain medication of tramadol. Again, at best this would constitute a difference in opinion, and
11 would not rise to a violation of the Eighth Amendment.

12 Next, plaintiff's allegations against defendant Smith are unclear. He alleges
13 defendant Smith refused to allow plaintiff to be seen on November 11, 2011, referring to an
14 exhibit that is not attached to the complaint. Plaintiff fails to provide sufficient information as to
15 defendant Smith's refusal. Throughout the complaint, plaintiff states he informed numerous
16 doctors and nurses about the pain he was in, and that he filled out and submitted numerous
17 medical treatment requests, including on November 11, 2011. However, he does not specifically
18 state why he needed to be treated on that particular day, and whether he received treatment or
19 not. There are simply not enough facts alleged to determine whether plaintiff can state a claim
20 against defendant Smith for denial of medical treatment. Plaintiff is reminded that in order to
21 state a claim, he has to meet the standards set forth above.

22 Finally, plaintiff alleges that while he was in administrative segregation, Dr. Tan
23 refused to give plaintiff a soft shoe chrono, and refused to order an MRI. However, he also states
24 in the complaint that Dr. Tan provided plaintiff an alternative to the soft shoe chrono in the form
25 of shoe insoles. The shoe insoles were not what plaintiff wanted, but again this allegation is
26 based on a difference of opinion not denial of treatment. Similarly, plaintiff specifically states

1 that Dr. Tan's refusal to order the MRI on August 27, 2012, was based on an August 1, 2012 x-
2 ray which showed nothing. That an MRI was done in November 2012, which showed a loose
3 body in his knee, does not necessarily amount to the denial of medical treatment. Again, it
4 appears this is a difference in opinion as to what was medically necessary, not a refusal to
5 provide plaintiff treatment.

6 E. Motion to Serve

7 Finally, plaintiff has filed two motions in an attempt to have his complaint served
8 (Docs. 25, 26). However, as discussed above, the undersigned has concluded that plaintiff's
9 complaint fails to state a claim and service is not warranted at this time. If plaintiff files an
10 amended complaint as set forth below, the court will address whether service of any amended
11 complaint is appropriate at that time.

12 **III. CONCLUSION**

13 Because it is possible that some of the deficiencies identified in this order may be
14 cured by amending the complaint, plaintiff is entitled to leave to amend prior to dismissal of the
15 entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

16 Plaintiff is informed that, as a general rule, an amended complaint supersedes the original
17 complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following
18 dismissal with leave to amend, all claims alleged in the original complaint which are not alleged
19 in the amended complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).
20 Therefore, if plaintiff amends the complaint, the court cannot refer to the prior pleading in order
21 to make plaintiff's amended complaint complete. See Local Rule 220. An amended complaint
22 must be complete in itself without reference to any prior pleading. See id.

23 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
24 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
25 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
26 each named defendant is involved, and must set forth some affirmative link or connection

1 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d
2 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

3 Because some of the defects identified in this order cannot be cured by
4 amendment, plaintiff is not entitled to leave to amend as to such claims. Plaintiff, therefore, now
5 has the following choices: (1) plaintiff may file an amended complaint which does not allege the
6 claims identified herein as incurable, in which case such claims will be deemed abandoned and
7 the court will address the remaining claims; or (2) plaintiff may file an amended complaint which
8 continues to allege claims identified as incurable, in which case the court will issue findings and
9 recommendations that such claims be dismissed from this action, as well as such other orders
10 and/or findings and recommendations as may be necessary to address the remaining claims.

11 Finally, plaintiff is warned that failure to file an amended complaint within the
12 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
13 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
14 with Rule 8 may, in the court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
15 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff's complaint is dismissed with leave to amend;
- 18 2. Plaintiff shall file a amended complaint within 30 days of the date of
19 service of this order; and
- 20 3. Plaintiff's motion for ruling (Doc. 25) and for service (Doc. 26) are
21 denied.

22
23 DATED: July 19, 2018

24 
25 **CRAIG M. KELLISON**
26 UNITED STATES MAGISTRATE JUDGE