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

RICHARD V. ROOD,
Plaintiff,
v.
GARY SWARTHOUT, et al.,
Defendants.

No. 2:13-CV-0478-DMC-P

ORDER

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 first amended complaint (ECF No. 33). Plaintiff alleges deliberate indifference to a serious injury—an alleged violation of his Eighth Amendment right against cruel and unusual punishment.

I. SCREENING REQUIREMENT AND STANDARD

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).

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1 Specifically, Plaintiff alleges Defendant S. Hannies was deliberately indifferent
2 because he was made aware of Plaintiff’s diagnosis, current pain, and the possibility of continued
3 and worsened harm, but failed to alert proper medical personnel or to provide adequate medical
4 care. Plaintiff alleges Defendant R. Tan was deliberately indifferent because he was made aware
5 of Plaintiff’s diagnosis, current pain, and the possibility of continued and worsened harm, but
6 failed to conduct an adequate examination or properly treat Plaintiff’s injury. Additionally,
7 Plaintiff alleges Tan was deliberately indifferent when he failed to treat Plaintiff’s knee after his
8 surgery for his ACL tear. Plaintiff alleges Defendant Fontillas was deliberately indifferent
9 because he was made aware of Plaintiff’s diagnosis, current pain, and the possibility of continued
10 and worsened harm, but failed to provide proper medical care—only taking Plaintiff’s vitals
11 while failing to address his actual injury or pain. Plaintiff alleges Defendant Hardman was
12 deliberately indifferent because he was made aware of Plaintiff’s diagnosis, current pain, and the
13 possibility of continued and worsened harm, but failed to alert the proper medical personnel or to
14 provide adequate medical care.

15 Further, Plaintiff alleges Defendant Win was deliberately indifferent because he
16 also was made aware of Plaintiff’s diagnosis, current pain, and the possibility of continued and
17 worsened harm, but failed to provide adequate medical treatment, and instead determined that
18 Plaintiff did not have an ACL tear. Plaintiff alleges that Dr. Win provided inappropriate
19 medication that caused an upset stomach. Plaintiff alleges Defendant Kiez was deliberately
20 indifferent because he was made aware of Plaintiff’s diagnosis, current pain, and the possibility of
21 continued and worsened harm, but failed to alert proper medical personnel or provide adequate
22 medical care. Plaintiff contends the medical personnel then began a campaign against Plaintiff
23 intended to bias other medical personnel against him.

24 Plaintiff alleges Defendant Kiez was deliberately indifferent because he was made aware
25 of Plaintiff’s diagnosis, current pain, and the possibility of continued and worsened harm, but
26 failed to alert proper medical personnel or provide adequate medical care. Finally, Plaintiff
27 alleges Defendant Braunger was deliberately indifferent because he was made aware of Plaintiff’s
28 diagnosis, current pain, and the possibility of continued and worsened harm, but ignored

1 Plaintiff's medical request. Plaintiff alleges these events occurred between December 2010 and
2 May 2011, when he received an MRI of his knee and the ACL tear was confirmed and surgery
3 scheduled. Plaintiff provides no factual allegations related to any of the other 38 named
4 Defendants.

6 III. ANALYSIS

7 A. Failure to Link

8 Plaintiff has named 46 Defendants, however, he has pleaded facts as to only eight.
9 To state a claim under 42 U.S.C. § 1983, the plaintiff must allege an actual connection or link
10 between the actions of the named defendants and the alleged deprivations. See Monell v. Dep't
11 of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A person
12 'subjects' another to the deprivation of a constitutional right, within the meaning of § 1983, if he
13 does an affirmative act, participates in another's affirmative acts, or omits to perform an act which
14 he is legally required to do that causes the deprivation of which complaint is made." Johnson v.
15 Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations concerning the
16 involvement of official personnel in civil rights violations are not sufficient. See Ivey v. Board of
17 Regents, 673 F.2d 266, 268 (9th Cir. 1982). Rather, the plaintiff must set forth specific facts as to
18 each individual defendant's causal role in the alleged constitutional deprivation. See Leer v.
19 Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

20 Because, Plaintiff has failed to provide any facts linking the remaining 38
21 Defendants with an alleged violation, Plaintiff's claims must be dismissed as to those Defendants.
22 Plaintiff will, however, be provided leave to amend in order to plead sufficient facts.

23 B. Claims Against Hannies, Tan, Fontillas, Hardman, Win, Kiesz, Hernst, 24 Braunger

25 Plaintiff allege Defendants Hannies, Tan, Fontillas, Hardman, Win, Kiesz, Hernst,
26 Braunger were deliberately indifferent to his severe injury, amounting to a violation of the Eighth
27 Amendment. Plaintiff has pleaded sufficient facts to the claim related to these Defendants to pass
28 screening.

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IV. AMENDING THE COMPLAINT

Because it is possible that some of the deficiencies identified in this order may be cured by amending the complaint, plaintiff is entitled to leave to amend. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is informed that, as a general rule, an amended complaint supersedes the original complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Therefore, if plaintiff amends the complaint, the court cannot refer to the prior pleading in order to make plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be complete in itself without reference to any prior pleading. See id.

If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how each named defendant is involved, and must set forth some affirmative link or connection between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

Because the complaint appears to otherwise state cognizable claims, if no amended complaint is filed within the time allowed therefor, the court will issue findings and recommendations that the claims identified herein as defective be dismissed, as well as such further orders as are necessary for service of process as to the cognizable claims.

V. CONCLUSION

Accordingly, IT IS HEREBY ORDERED that plaintiff may file a second amended complaint within 30 days of the date of service of this order.

Dated: January 16, 2019



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE