

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
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARC SLAMEN,
Plaintiff,
v.
MANUEL SABIN, M.D., et al.,
Defendants.

No. 2:14-cv-1067-EFB P

ORDER GRANTING IFP AND DISMISSING
COMPLAINT WITH LEAVE TO AMEND

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983.¹ In addition to filing a complaint, plaintiff has filed an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. Request to Proceed In Forma Pauperis

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).

////

¹ This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff’s consent. See E.D. Cal. Local Rules, Appx. A, at (k)(4).

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 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
9 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
10 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
11 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
12 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
13 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
14 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
15 U.S. 662, 679 (2009).

16 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
17 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
18 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
19 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
20 678.

21 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
22 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
23 content that allows the court to draw the reasonable inference that the defendant is liable for the
24 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
25 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
26 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
27 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

28 /////

1 **III. Screening Order**

2 Plaintiff alleges that on December 24, 2013, defendant Dr. Sabin claimed that plaintiff had
3 been caught with drugs, had been weaned off of morphine, and slept through the night. ECF No.
4 4. Plaintiff claims that these statements were false, as there are “no drugs in lock up,” he was cut
5 off of morphine “cold turkey,” and he beat on his cell door all night. Plaintiff requests that “all
6 115s . . . be removed,” to “file charges” against defendant, and \$50,000 in damages. Although
7 the complaint fails to identify any claim for relief, the nature of any federal or constitutional
8 violation appears to relate to plaintiff’s medical needs and possibly his right to due process in a
9 disciplinary proceeding.

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

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

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

1 It must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).
2 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *George*
3 *v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

4 Any amended complaint must be written or typed so that it so that it is complete in itself
5 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
6 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
7 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
8 F.3d 1467, 1474 (9th Cir. 1997) (the ““amended complaint supersedes the original, the latter
9 being treated thereafter as non-existent.””) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
10 1967)).

11 The court cautions plaintiff that failure to comply with the Federal Rules of Civil
12 Procedure, this court’s Local Rules, or any court order may result in this action being dismissed.
13 *See* Local Rule 110.

14 In addition, the court notes that the following legal standards may apply to plaintiff’s
15 intended claims for relief.

16 To state a claim under § 1983, a plaintiff must allege: (1) the violation of a federal
17 constitutional or statutory right; and (2) that the violation was committed by a person acting under
18 the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988); *Jones v. Williams*, 297 F.3d
19 930, 934 (9th Cir. 2002). An individual defendant is not liable on a civil rights claim unless the
20 facts establish the defendant’s personal involvement in the constitutional deprivation or a causal
21 connection between the defendant’s wrongful conduct and the alleged constitutional deprivation.
22 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44
23 (9th Cir. 1978). That is, plaintiff may not sue any official on the theory that the official is liable
24 for the unconstitutional conduct of his or her subordinates. *Ashcroft v. Iqbal*, 556 U.S. 662, 679
25 (2009). In sum, plaintiff must identify the particular person or persons who violated his rights.
26 He must also plead facts showing how that particular person was involved in the alleged
27 violation.

28 ////

1 To succeed on an Eighth Amendment claim predicated on the denial of medical care, a
2 plaintiff must establish that he had a serious medical need and that the defendant's response to
3 that need was deliberately indifferent. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006); *see*
4 *also Estelle v. Gamble*, 429 U.S. 97, 106 (1976). A serious medical need exists if the failure to
5 treat the condition could result in further significant injury or the unnecessary and wanton
6 infliction of pain. *Jett*, 439 F.3d at 1096. Deliberate indifference may be shown by the denial,
7 delay or intentional interference with medical treatment or by the way in which medical care is
8 provided. *Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988).

9 To act with deliberate indifference, a prison official must both be aware of facts from
10 which the inference could be drawn that a substantial risk of serious harm exists, and he must also
11 draw the inference. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Thus, a defendant is liable if
12 he knows that plaintiff faces "a substantial risk of serious harm and disregards that risk by failing
13 to take reasonable measures to abate it." *Id.* at 847. A physician need not fail to treat an inmate
14 altogether in order to violate that inmate's Eighth Amendment rights. *Ortiz v. City of Imperial*,
15 884 F.2d 1312, 1314 (9th Cir. 1989). A failure to competently treat a serious medical condition,
16 even if some treatment is prescribed, may constitute deliberate indifference in a particular case.
17 *Id.*

18 It is important to differentiate common law negligence claims of malpractice from claims
19 predicated on violations of the Eighth Amendment's prohibition of cruel and unusual punishment.
20 In asserting the latter, "[m]ere 'indifference,' 'negligence,' or 'medical malpractice' will not
21 support this cause of action." *Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir.
22 1980) (citing *Estelle v. Gamble*, 429 U.S. 97, 105-106 (1976); *see also Toguchi v. Chung*, 391
23 F.3d 1051, 1057 (9th Cir. 2004).

24 In the context of a disciplinary proceeding where a liberty interest is at stake, due process
25 requires that "some evidence" support the disciplinary decision. *Superintendent v. Hill*, 472 U.S.
26 445, 455 (1985). The inmate must also receive: "(1) advance written notice of the disciplinary
27 charges; (2) an opportunity, when consistent with institutional safety and correctional goals, to
28 call witnesses and present documentary evidence in his defense; and (3) a written statement by

1 the factfinder of the evidence relied on and the reasons for the disciplinary action.” *Id.* at 454
2 (citing *Wolff v. McDonnell*, 418 U.S. 539, 563-67 (1974).

3 **IV. Summary of Order**

4 Accordingly, IT IS HEREBY ORDERED that:

5 1. Plaintiff’s request to proceed in forma pauperis (ECF No. 12) is granted.

6 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in
7 accordance with the notice to the California Department of Corrections and Rehabilitation filed
8 concurrently herewith.

9 3. The complaint is dismissed with leave to amend within 30 days. The amended
10 complaint must bear the docket number assigned to this case and be titled “First Amended
11 Complaint.” Failure to comply with this order will result in dismissal of this action for failure to
12 state a claim. If plaintiff files an amended complaint stating a cognizable claim the court will
13 proceed with service of process by the United States Marshal.

14 Dated: April 6, 2015.

15 
16 EDMUND F. BRENNAN
17 UNITED STATES MAGISTRATE JUDGE
18
19
20
21
22
23
24
25
26
27
28