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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 CURTIS L. MARTIN,

12 Plaintiff,

13 v.

14 CALIFORNIA DEPARTMENT OF
15 CORRECTIONS,

16 Defendant.

No. 2:14-cv-1565-EFB P

ORDER GRANTING IFP AND DISMISSING
COMPLAINT WITH LEAVE TO AMEND

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18 Plaintiff is a state prisoner proceeding without counsel in an action brought under 42
19 U.S.C. § 1983. In addition to filing a complaint, plaintiff has filed an application to proceed in
20 forma pauperis pursuant to 28 U.S.C. § 1915.

21 **I. Request to Proceed In Forma Pauperis**

22 Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2).
23 Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect
24 and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C.
25 § 1915(b)(1) and (2).

26 **II. Screening Requirement and Standards**

27 Federal courts must engage in a preliminary screening of cases in which prisoners seek
28 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.

1 § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion
2 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which
3 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
4 relief.” *Id.* § 1915A(b).

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

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

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

25 **III. Screening Order**

26 The court has reviewed plaintiff’s complaint pursuant to § 1915A and finds that the
27 allegations are too vague and conclusory to state a cognizable claim. The complaint names
28 CDCR as the sole defendant, and the allegations consist of the following:

1 Doctor Lankford-DO-R have did nothing but endanger my live since I arrived here
2 3-10-2014. He gave me the wrong medications since I been here 3-10-2014 over
3 three time, now he have denied my back surgery for no good reason. He have
4 denied accommodations I have been having since 2004. He make bad jokes about
5 my medical condition. On 5-24-2014 he state I have prison asthma yet I have two
6 inhaler for asthma. I have medical documents for all of the above statements. I
7 been fighting for back surgery since 2004. I been suffering in severe pain since
8 2004.

9 ECF No. 5, § III. Plaintiff's intention appears to be to assert an Eighth Amendment claim of
10 deliberate indifference to medical needs against Dr. Lankford. However, plaintiff has not named
11 Lankford as a defendant, nor has he pleaded sufficient facts to demonstrate that Lankford
12 responded to plaintiff's serious medical needs, whatever they may be, with deliberate
13 indifference. Although the Federal Rules adopt a flexible pleading policy, a complaint must give
14 fair notice and state the elements of the claim plainly and succinctly. *Jones v. Community Redev.*
15 *Agency*, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of
16 particularity overt acts which defendants engaged in that support plaintiff's claim. *Id.* Because
17 plaintiff fails to state a claim for relief, the complaint must be dismissed.

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

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

It must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

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1 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *George*
2 *v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

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

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

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

27 To succeed on an Eighth Amendment claim predicated on the denial of medical care, a
28 plaintiff must establish that he had a serious medical need and that the defendant’s response to

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

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

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

22 **IV. Summary of Order**

23 Accordingly, IT IS HEREBY ORDERED that:

24 1. Plaintiff’s request to proceed in forma pauperis (ECF Nos. 6 & 7) is granted.

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

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

6 Dated: April 8, 2015.

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8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE
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