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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID KING,  
Plaintiff,  
v.  
WANG, et al.,  
Defendants.

No. 2:14-cv-1817 KJM DB P

ORDER

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action pursuant to 42 U.S.C. § 1983. On February 26, 2016, defendant Nurse Wang’s motion to dismiss was granted, and plaintiff’s complaint was dismissed with leave to amend. (ECF No. 32.) Now pending is plaintiff’s first amended complaint for screening.

**I. Screening Requirement**

The in forma pauperis statute provides, “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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1     **II.     Pleading Standard**

2             Section 1983 “provides a cause of action for the deprivation of any rights, privileges, or  
3 immunities secured by the Constitution and laws of the United States.” Wilder v. Virginia Hosp.  
4 Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not itself a source of  
5 substantive rights, but merely provides a method for vindicating federal rights conferred  
6 elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

7             To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a  
8 right secured by the Constitution or laws of the United States was violated and (2) that the alleged  
9 violation was committed by a person acting under the color of state law. See West v. Atkins, 487  
10 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987).

11             A complaint must contain “a short and plain statement of the claim showing that the  
12 pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
13 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
14 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
15 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual  
16 matter, accepted as true, to state a claim to relief that is plausible on its face.” Id. Facial  
17 plausibility demands more than the mere possibility that a defendant committed misconduct and,  
18 while factual allegations are accepted as true, legal conclusions are not. Id. at 677-78.

19     **III.     Plaintiff’s Allegations**

20             At all relevant times, plaintiff was an inmate housed at Folsom State Prison (“FSP”) in  
21 Folsom, California. He brings suit against Nurse Wang and the FSP Health Care Manager III.

22             On August 17, 2013, plaintiff told Nurse Wang that his jaw is swollen, he has a toothache,  
23 and he is in terrible pain. Nurse Wang responded that there is nothing she can do and directed  
24 plaintiff to file a medical request. Plaintiff then suffered four days of pain, headaches and little  
25 sleep before he was treated for an abscessed tooth. Plaintiff claims dental emergencies require  
26 immediate care and not the submission of a medical request, and he accuses the Health Care  
27 Manager III of failing to properly supervise staff.

28             Plaintiff seeks damages in the amount of \$40,000.

1 **IV. Discussion**

2 Where a prisoner's Eighth Amendment claims arise in the context of medical care, the  
3 prisoner must allege and prove "acts or omissions sufficiently harmful to evidence deliberate  
4 indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976). An Eighth  
5 Amendment medical claim has two elements: "the seriousness of the prisoner's medical need and  
6 the nature of the defendant's response to that need." McGuckin v. Smith, 974 F.2d 1050, 1059  
7 (9th Cir. 1991), overruled on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th  
8 Cir. 1997) (*en banc*).

9 A serious medical need exists if the failure to treat the condition could result in further  
10 significant injury or the unnecessary and wanton infliction of pain. Jett v. Penner, 439 F.3d 1091,  
11 1096 (9th Cir. 2006). To act with deliberate indifference, a prison official must both be aware of  
12 facts from which the inference could be drawn that a substantial risk of serious harm exists, and  
13 he must also draw the inference. Farmer v. Brennan, 511 U.S. 825, 837 (1994). Thus, a  
14 defendant is liable if he knows that plaintiff faces "a substantial risk of serious harm and  
15 disregards that risk by failing to take reasonable measures to abate it." Id. at 847. "It is enough  
16 that the official acted or failed to act despite his knowledge of a substantial risk of harm." Id. at  
17 842.

18 Delays in providing medical care may manifest deliberate indifference. Estelle, 429 U.S.  
19 at 104-05. To establish a claim of deliberate indifference arising from a delay in providing care, a  
20 plaintiff must show that the delay was harmful. See Berry v. Bunnell, 39 F.3d 1056, 1057 (9th  
21 Cir. 1994); McGuckin, 974 F.2d at 1059; Wood v. Housewright, 900 F.2d 1332, 1335 (9th Cir.  
22 1990); Shapley v. Nevada Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985). In  
23 this regard, "[a] prisoner need not show his harm was substantial; however, such would provide  
24 additional support for the inmate's claim that the defendant was deliberately indifferent to his  
25 needs." Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006); see also McGuckin, 974 F.2d at  
26 1060. In addition, a physician need not fail to treat an inmate altogether in order to violate that  
27 inmate's Eighth Amendment rights. Ortiz v. City of Imperial, 884 F.2d 1312, 1314 (9th Cir.  
28 1989) (*per curiam*). A failure to competently treat a serious medical condition, even if some

1 treatment is prescribed, may constitute deliberate indifference in a particular case. Id.

2 Plaintiff accuses Nurse Wang of failing to provide any care after plaintiff complained of  
3 terrible pain and swelling; instead, she directed plaintiff to file a medical request. Although prison  
4 regulations include directives concerning a dental emergency, including the provision of  
5 immediate care without regard to the filing of a medical request, plaintiff was forced to wait a  
6 number of days in pain before he was examined by a dentist for an abscessed tooth. Plaintiff has  
7 sufficiently alleged an Eighth Amendment medical indifference claim against Nurse Wang.

8 Plaintiff next accuses the Health Care Manager III of failing to supervise staff regarding  
9 the provision of emergency dental care. These allegations fail to meet the minimum pleading  
10 standards. Under Section 1983, a plaintiff bringing an individual capacity claim must demonstrate  
11 that each defendant personally participated in the deprivation of his rights. See Jones v. Williams,  
12 297 F.3d 930, 934 (9th Cir. 2002). There must be an actual connection or link between the actions  
13 of the defendants and the deprivation alleged to have been suffered by Plaintiff. See Monell v.  
14 Dep't of Soc. Servs., 436 U.S. 658, 691, 695 (1978).

15 To the extent plaintiff seeks to impose liability on the basis of the supervisory role of this  
16 defendant, his claim fails. Government officials may not be held liable for the actions of their  
17 subordinates under a theory of respondeat superior. Monell, 436 U.S. at 691. Liability may be  
18 imposed on supervisory defendants under § 1983 only if the supervisor: (1) personally  
19 participated in the deprivation of constitutional rights or directed the violations or (2) knew of the  
20 violations and failed to act to prevent them. Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989);  
21 Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). This defendant cannot be held liable for  
22 being generally deficient in his or her supervisory duties.

## 23 **V. Conclusion**

24 The pleading states an Eighth Amendment medical indifference claim against Nurse  
25 Wang. All other claims and defendants must be dismissed.

26 The court will grant plaintiff the opportunity to file a second amended complaint to cure  
27 noted defects, to the extent he believes in good faith he can do so. Noll v. Carlson, 809 F.2d 1446,  
28 1448-49 (9th Cir. 1987). If plaintiff chooses to amend, he must demonstrate that the alleged acts

1 resulted in a deprivation of his constitutional rights. Iqbal, 556 U.S. at 677-78. Plaintiff must set  
2 forth “sufficient factual matter . . . to ‘state a claim that is plausible on its face.’” Id. at 678  
3 (quoting Twombly, 550 U.S. at 555). Plaintiff should note that although he has been given the  
4 opportunity to amend, it is not for the purposes of adding new claims. George v. Smith, 507 F.3d  
5 605, 607 (7th Cir. 2007) (no “buckshot” complaints). Plaintiff should carefully read this screening  
6 order and focus his efforts on curing the deficiencies set forth above.

7 If plaintiff does not wish to file a second amended complaint, and he is agreeable to  
8 proceeding only on the claim found to be cognizable, he may file a notice informing the court that  
9 he does not intend to amend, and he is willing to proceed only on his cognizable claim. The court  
10 then will recommend dismissal of the remaining claims and defendant will be directed to file a  
11 responsive pleading.

12 If plaintiff files an amended complaint, it should be brief, Fed. R. Civ. P. 8(a), but it must  
13 state what each named defendant did that led to the deprivation of plaintiff’s constitutional rights,  
14 Iqbal, 556 U.S. at 676-677. Although accepted as true, the “[f]actual allegations must be  
15 [sufficient] to raise a right to relief above the speculative level. . . .” Twombly, 550 U.S. at 555  
16 (citations omitted).

17 Finally, an amended complaint supersedes the prior complaint, see Loux v. Rhay, 375  
18 F.2d 55, 57 (9th Cir. 1967), and it must be “complete in itself without reference to the prior or  
19 superseded pleading,” Local Rule 220.

20 For these reasons, IT IS HEREBY ORDERED that The Clerk’s Office shall send plaintiff  
21 a blank civil rights complaint form;

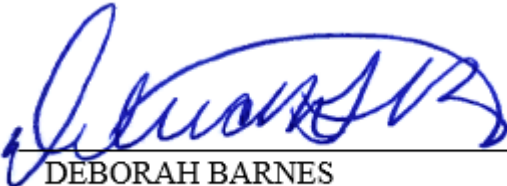
- 22 1. Within thirty (30) days from the date of service of this order, plaintiff must either:
  - 23 a. File a second amended complaint curing the deficiencies identified in this  
24 order, or
  - 25 b. Notify the court in writing that he does not wish to file a second amended  
26 complaint and he is willing to proceed only on the claim found to be  
27 cognizable in this order; and

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2. If plaintiff fails to comply with this order, the undersigned will recommend that this action be dismissed for failure to obey a court order and failure to prosecute.

Dated: March 31, 2017



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DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

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