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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

REFUGIO ARAIZA ESCALANTE,  
Plaintiff,  
v.  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS, et al.,  
Defendants.

No. 2:15-cv-1451-EFB P

ORDER GRANTING IFP AND DISMISSING  
COMPLAINT PURSUANT TO 28 U.S.C. §  
1915A

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983.<sup>1</sup> He 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).

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<sup>1</sup> 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).

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1 **III. Screening Order**

2 The court has reviewed plaintiff’s complaint pursuant to § 1915A and finds that the  
3 allegations are too vague and conclusory to state a cognizable claim for relief. The complaint  
4 names a “Nurse(s) Doe” and a “Doctor Doe” as defendants and the allegations consist of the  
5 following:

6 All defendants named in this civil rights lawsuit violated plaintiffs 8<sup>th</sup> Amend right  
7 to be free from cruel and unusual punishment by deliberate indifference to  
8 plaintiffs serious medical needs such as (1) stomach bleeding from “E coli.” (2)  
9 miss diagnosed as “Flu” which allowed the Eoli to do permanent damage to  
plaintiff’s organs. Additionally defendant knew or should have known plaintiff  
was in immediate danger with escrutiating pain.

10 ECF No. 1, § IV. Plaintiff’s appears to be attempting to assert Eighth Amendment claims of  
11 deliberate indifference to medical needs against unknown defendants. However, he has not  
12 pleaded sufficient facts to state a proper claim for relief. Although the Federal Rules adopt a  
13 flexible pleading policy, a complaint must give fair notice and state the elements of the claim  
14 plainly and succinctly. *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984).  
15 Plaintiff must allege with at least some degree of particularity overt acts which defendants  
16 engaged in that support plaintiff’s claim. *Id.* Because plaintiff fails to state a claim for relief, the  
17 complaint must be dismissed. In addition, plaintiff’s naming of Doe defendants is problematic.  
18 Unknown persons cannot be served with process until they are identified by their real names and  
19 the court will not investigate the names and identities of unnamed defendants.

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

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

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

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

9 Any amended complaint must be written or typed so that it so that it is complete in itself  
10 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended  
11 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the  
12 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114  
13 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter  
14 being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.  
15 1967)).

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

19 In addition, the court notes that the following legal standards may apply to plaintiff's  
20 intended claim for relief.

21 To state a claim under § 1983, a plaintiff must allege: (1) the violation of a federal  
22 constitutional or statutory right; and (2) that the violation was committed by a person acting under  
23 the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988); *Jones v. Williams*, 297 F.3d  
24 930, 934 (9th Cir. 2002).

25 An individual defendant is not liable on a civil rights claim unless the facts establish the  
26 defendant's personal involvement in the constitutional deprivation or a causal connection between  
27 the defendant's wrongful conduct and the alleged constitutional deprivation. *See Hansen v.*  
28 *Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th Cir. 1978).

1 Plaintiff may not sue any official on the theory that the official is liable for the unconstitutional  
2 conduct of his or her subordinates. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Plaintiff must  
3 identify the particular person or persons who violated his rights. He must also plead facts  
4 showing how that particular person was involved in the alleged violation.

5 Claims for damages against the state, its agencies or its officers for actions performed in  
6 their official capacities are barred under the Eleventh Amendment, unless the state waives its  
7 immunity. *Kentucky v. Graham*, 473 U.S. 159, 169 (1985); *see also Will v. Michigan Dep't of*  
8 *State Police*, 491 U.S. 58, 71 (1989) (neither a state nor its officials acting in their official  
9 capacities are persons under § 1983). Section 1983 does not abrogate the states' Eleventh  
10 Amendment immunity from suit. *See Quern v. Jordan*, 440 U.S. 332, 344-45 (1979). *See also*  
11 *Hafer v. Melo*, 502 U.S. 21, 30 (1991) (clarifying that Eleventh Amendment does not bar suits  
12 against state officials sued in their individual capacities, nor does it bar suits for prospective  
13 injunctive relief against state officials sued in their official capacities).

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

22 To act with deliberate indifference, a prison official must both be aware of facts from  
23 which the inference could be drawn that a substantial risk of serious harm exists, and he must also  
24 draw the inference. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Thus, a defendant is liable if  
25 he knows that plaintiff faces "a substantial risk of serious harm and disregards that risk by failing  
26 to take reasonable measures to abate it." *Id.* at 847. A physician need not fail to treat an inmate  
27 altogether in order to violate that inmate's Eighth Amendment rights. *Ortiz v. City of Imperial*,  
28 884 F.2d 1312, 1314 (9th Cir. 1989). A failure to competently treat a serious medical condition,

1 even if some treatment is prescribed, may constitute deliberate indifference in a particular case.

2 *Id.*

3 It is important to differentiate common law negligence claims of malpractice from claims  
4 predicated on violations of the Eight Amendment's prohibition of cruel and unusual punishment.  
5 In asserting the latter, "[m]ere 'indifference,' 'negligence,' or 'medical malpractice' will not  
6 support this cause of action." *Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir.  
7 1980) (citing *Estelle v. Gamble*, 429 U.S. 97, 105-106 (1976); see also *Toguchi v. Chung*, 391  
8 F.3d 1051, 1057 (9th Cir. 2004).

9 **IV. Summary of Order**

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. Plaintiff's request to proceed in forma pauperis (ECF No. 7) is granted.
- 12 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected  
13 in accordance with the notice to the California Department of Corrections and  
14 Rehabilitation filed concurrently herewith.
- 15 3. The complaint is dismissed with leave to amend within 30 days. The complaint  
16 must bear the docket number assigned to this case and be titled "Amended  
17 Complaint." Failure to comply with this order will result in dismissal of this  
18 action for failure to prosecute. If plaintiff files an amended complaint stating a  
19 cognizable claim the court will proceed with service of process by the United  
20 States Marshal.

21 Dated: January 26, 2017.

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23 EDMUND F. BRENNAN  
24 UNITED STATES MAGISTRATE JUDGE  
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