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

DESHAWN DAVIS,

No. 2:15-CV-2027-JAM-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

D. REAMES, et al.,

Defendants.

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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 second amended complaint (Doc. 23).

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). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne,

1 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied  
2 if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon  
3 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must  
4 allege with at least some degree of particularity overt acts by specific defendants which support  
5 the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
6 impossible for the court to conduct the screening required by law when the allegations are vague  
7 and conclusory.

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9 **I. PLAINTIFF'S ALLEGATIONS**

10 Plaintiff names the following as defendants: (1) Macias; (2) Reames; and (3) Cox.  
11 Plaintiff states that, on March 18, 2015, he was told by defendant Macias to move to a new cell,  
12 currently occupied by inmate Player. According to plaintiff, the move had been ordered by  
13 defendant Reames. Plaintiff state: "Prior to the order of Defendants Macias and Reames the  
14 plaintiff was already aware of the fact that inmate Player was a member of a rival gang. . . ."  
15 Plaintiff also claims that he was aware that inmate Player was receiving mental health treatment.

16 Plaintiff alleges that he "attempted to warn defendants" by "apprising them of  
17 these facts." According to plaintiff, he was told by defendant Reames that "any refusal to comply  
18 with the direct order to move into the cell with inmate Player would result in the issuance of a  
19 CDCR 115 Rules Violation Report for refusing assigned housing. . . ." Plaintiff states that,  
20 despite his misgivings, he complied. Plaintiff alleges that he was attacked by inmate Player  
21 "within moments" of arriving in his new cell.

22 Plaintiff claims that he was examined for injuries by defendant Cox, but that  
23 defendant Cox failed to discovery stab wounds he sustained in the attack.

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1 **II. DISCUSSION**

2 By separate order, the court concludes that the second amended complaint states a  
3 cognizable claim for relief against defendants Macias and Reames. The complaint does not,  
4 however, state a claim for relief against defendant Cox based on the medical care plaintiff's  
5 received.

6 The treatment a prisoner receives in prison and the conditions under which the  
7 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel  
8 and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan,  
9 511 U.S. 825, 832 (1994). The Eighth Amendment “. . . embodies broad and idealistic concepts  
10 of dignity, civilized standards, humanity, and decency.” Estelle v. Gamble, 429 U.S. 97, 102  
11 (1976). Conditions of confinement may, however, be harsh and restrictive. See Rhodes v.  
12 Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with  
13 “food, clothing, shelter, sanitation, medical care, and personal safety.” Toussaint v. McCarthy,  
14 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only  
15 when two requirements are met: (1) objectively, the official's act or omission must be so serious  
16 such that it results in the denial of the minimal civilized measure of life's necessities; and (2)  
17 subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of  
18 inflicting harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison  
19 official must have a “sufficiently culpable mind.” See id.

20 Deliberate indifference to a prisoner's serious illness or injury, or risks of serious  
21 injury or illness, gives rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at  
22 105; see also Farmer, 511 U.S. at 837. This applies to physical as well as dental and mental  
23 health needs. See Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). An injury or illness is  
24 sufficiently serious if the failure to treat a prisoner's condition could result in further significant  
25 injury or the “. . . unnecessary and wanton infliction of pain.” McGuckin v. Smith, 974 F.2d  
26 1050, 1059 (9th Cir. 1992); see also Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994).

1 Factors indicating seriousness are: (1) whether a reasonable doctor would think that the condition  
2 is worthy of comment; (2) whether the condition significantly impacts the prisoner's daily  
3 activities; and (3) whether the condition is chronic and accompanied by substantial pain. See  
4 Lopez v. Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000) (en banc).

5 The requirement of deliberate indifference is less stringent in medical needs cases  
6 than in other Eighth Amendment contexts because the responsibility to provide inmates with  
7 medical care does not generally conflict with competing penological concerns. See McGuckin,  
8 974 F.2d at 1060. Thus, deference need not be given to the judgment of prison officials as to  
9 decisions concerning medical needs. See Hunt v. Dental Dep't, 865 F.2d 198, 200 (9th Cir.  
10 1989). The complete denial of medical attention may constitute deliberate indifference. See  
11 Toussaint v. McCarthy, 801 F.2d 1080, 1111 (9th Cir. 1986). Delay in providing medical  
12 treatment, or interference with medical treatment, may also constitute deliberate indifference.  
13 See Lopez, 203 F.3d at 1131. Where delay is alleged, however, the prisoner must also  
14 demonstrate that the delay led to further injury. See McGuckin, 974 F.2d at 1060.

15 Negligence in diagnosing or treating a medical condition does not, however, give  
16 rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 106. Moreover, a  
17 difference of opinion between the prisoner and medical providers concerning the appropriate  
18 course of treatment does not give rise to an Eighth Amendment claim. See Jackson v. McIntosh,  
19 90 F.3d 330, 332 (9th Cir. 1996).

20 In this case, plaintiff admits that he was examined by defendant Cox following the  
21 attack by inmate Player. According to plaintiff, defendant Cox failed to observe stab wounds  
22 sustained in the attack. At best, plaintiff's claim is based on negligence, not deliberate  
23 indifference. To the contrary, plaintiff admits that defendant Cox was not indifferent to his  
24 medical needs but, rather, that defendant Cox attended to those needs by providing an  
25 examination after the attack. Whether defendant Cox carried out that examination in an  
26 appropriate manner is a question of negligence, which is not cognizable under § 1983.

1 **III. CONCLUSION**

2 Because it does not appear possible that the deficiencies identified herein can be  
3 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of  
4 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

5 Based on the foregoing, the undersigned recommends that defendant Cox be  
6 dismissed for failure to state a claim.

7 These findings and recommendations are submitted to the United States District  
8 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
9 after being served with these findings and recommendations, any party may file written  
10 objections with the court. Responses to objections shall be filed within 14 days after service of  
11 objections. Failure to file objections within the specified time may waive the right to appeal.  
12 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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14 DATED: March 16, 2018

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16 **CRAIG M. KELLISON**  
17 UNITED STATES MAGISTRATE JUDGE  
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