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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARTHUR RICHARD PEREZ,
Plaintiff,
v.
JEFFREY BEARD, et al.,
Defendants.

No. 2:16-cv-0073-JAM-EFB P

ORDER GRANTING IFP AND DISMISSING
COMPLAINT WITH LEAVE TO AMEND
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. He seeks leave 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 directed 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).

II. Screening Requirement and Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which

1 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
2 relief.” *Id.* § 1915A(b).

3 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
4 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
5 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
6 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
7 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

8 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
9 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
10 U.S. 662, 679 (2009).

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

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

23 **III. Screening Order**

24 In the complaint (ECF No. 1), plaintiff alleges that defendants Herrera and Dashiel
25 transported him in a van without securing his seatbelt. Plaintiff does not allege whether this was
26 a deliberate choice by the transporting officers or simply an oversight. Nor does he allege
27 whether he was shackled or unable to secure his own seatbelt. Defendant Herrera allegedly
28 accelerated and then slammed on the brakes in order to avoid hitting another transportation van,

1 driven by defendant Ponce. The sudden stop allegedly caused plaintiff to be thrown to the floor
2 and to sustain serious injuries. Plaintiff claims that the transportation officers were racing each
3 other to the clinic pursuant to an “underground” policy. *See* ECF No. 1 ¶ 25 (alleging that the
4 transportation officers do not want to arrive last because arriving last requires more paperwork
5 and longer shifts). In addition to defendants Dashiell, Herrera, and Ponce, the complaint names
6 numerous supervisory officials as defendants. Under the applicable standards discussed below,
7 these allegations fail to state a cognizable claim. To proceed, plaintiff must file an amended
8 complaint.

9 To state a claim under § 1983, a plaintiff must allege: (1) the violation of a federal
10 constitutional or statutory right; and (2) that the violation was committed by a person acting under
11 the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988); *Jones v. Williams*, 297 F.3d
12 930, 934 (9th Cir. 2002). An individual defendant is not liable on a civil rights claim unless the
13 facts establish the defendant’s personal involvement in the constitutional deprivation or a causal
14 connection between the defendant’s wrongful conduct and the alleged constitutional deprivation.
15 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44
16 (9th Cir. 1978).

17 Plaintiff may not sue any official on the theory that the official is liable for the
18 unconstitutional conduct of his or her subordinates. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1948
19 (2009). Because respondeat superior liability is inapplicable to § 1983 suits, “a plaintiff must
20 plead that each Government-official defendant, through the official’s own individual actions, has
21 violated the Constitution.” *Id.* Here, plaintiff improperly attempts to impose liability on
22 numerous supervisory defendants.

23 The Eighth Amendment protects prisoners from inhumane methods of punishment and
24 from inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir.
25 2006). Extreme deprivations are required to make out a conditions of confinement claim, and
26 only those deprivations denying the minimal civilized measure of life’s necessities are
27 sufficiently grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*,
28 503 U.S. 1, 9 (1992). To determine whether an Eighth Amendment violation has occurred, a

1 court should consider the circumstances, nature and duration of a deprivation of these necessities.
2 *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000) (referring to necessities such as adequate
3 shelter, food, clothing, sanitation, medical care, and personal safety). Further, plaintiff must
4 allege facts sufficient to support a claim that prison officials knew of and disregarded a
5 substantial risk of serious harm to the plaintiff. *E.g.*, *Farmer v. Brennan*, 511 U.S. 825, 847
6 (1994); *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998).

7 In some circumstances, the failure to secure an inmate's seatbelt may amount to a
8 constitutional violation. *See Brown v. Fortner*, 518 F.3d 552 (8th Cir. 2008) (potential Eighth
9 Amendment violation where officer knew that prisoner was restrained and could not secure his
10 own seatbelt, rejected request for a seatbelt, drove recklessly, and ignored requests to slow down);
11 *Wilbert v. Quarterman*, 647 F. Supp. 2d 760, 769 (S.D. Tex. 2009) ("Considering the different
12 circuit court opinions, it appears that an allegation of simply being transported without a seatbelt
13 does not, in and of itself, give rise to a constitutional claim. However, if the claim is combined
14 with allegations that the driver was driving recklessly, this combination of factors *may* violate the
15 Eighth Amendment."); *Brown v. Saca*, No. EDCV 09-01608-ODW, 2010 U.S. Dist. LEXIS
16 64964, at *9 (C.D. Cal. June 9, 2010) ("plaintiff's allegations that Saca and Crispin refused to
17 secure his seatbelt are sufficient to state a claim under the Eighth Amendment because he has
18 alleged that Saca and Crispin acted recklessly"). However, allegations that a defendant merely
19 accompanied an inmate during a transport are not sufficient to state a claim of deliberate
20 indifference. *See King v. San Joaquin County Sheriff's Dep't*, No. 04-cv1158-GEB-KJM, 2009
21 U.S. Dist. LEXIS 123283, at *11 (E.D. Cal. Mar. 4, 2009) ("[A] prison's or jail's failure to equip
22 a van or bus with seatbelts for the prisoners does not rise to the level of deliberate indifference as
23 a matter of constitutional law."), *adopted by* 2009 U.S. Dist. LEXIS 28630 (E.D. Cal. Apr. 4,
24 2009); *Harrington v. Bautista*, No. 1:10-cv-01802-LJO-SAB, 2014 U.S. Dist. LEXIS 1623, at *9-
25 10 (E.D. Cal. Jan. 6, 2014) (allegations that officers, who merely assisted in transporting plaintiff,
26 failed to demonstrate that they knew of and disregarded a substantial risk of serious harm to
27 plaintiff).

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1 For these reasons, the complaint is dismissed with leave to amend. Plaintiff will be
2 granted leave to file an amended complaint, if he can allege a cognizable legal theory against a
3 proper defendant and sufficient facts in support of that cognizable legal theory. *Lopez v. Smith*,
4 203 F.3d 1122, 1126-27 (9th Cir. 2000) (*en banc*) (district courts must afford pro se litigants an
5 opportunity to amend to correct any deficiency in their complaints). Should plaintiff choose to
6 file an amended complaint, the amended complaint shall clearly set forth the claims and
7 allegations against each defendant. Any amended complaint must cure the deficiencies identified
8 above and also adhere to the following requirements:

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

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

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

17 Any amended complaint must be written or typed so that it so that it is complete in itself
18 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
19 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
20 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
21 F.3d 1467, 1474 (9th Cir. 1997) (the ““amended complaint supersedes the original, the latter
22 being treated thereafter as non-existent.””) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
23 1967)).

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

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IV. Summary of Order

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's request to proceed in forma pauperis (ECF No. 2) is granted.
2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in accordance with the notice to the California Department of Corrections and Rehabilitation filed concurrently herewith.
3. The complaint is dismissed with leave to amend within 30 days. The amended complaint must bear the docket number assigned to this case and be titled "First Amended Complaint." Failure to comply with this order will result in recommendation of dismissal of this action for failure to prosecute.

Dated: March 21, 2017.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE