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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL HICKS,
Plaintiff,
v.
J. LIZARRAGA, et al.,
Defendants.

No. 2:16-cv-0453-JAM-EFB P

ORDER GRANTING IFP AND SCREENING
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. In addition to filing a complaint, 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).¹ 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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¹ According to the complaint (ECF No. 1 at 1), plaintiff has accumulated at least three “strikes” under 28 U.S.C. § 1915(g). Because he alleges that he faces an imminent danger of serious physical injury, he will be allowed to proceed in forma pauperis.

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 Plaintiff’s complaint alleges that the defendants violated the order entered in *Coleman v.*
3 *Brown*, No. 2:90-cv-0520 KJM DAD (E.D. Cal.), “by retaining plaintiff in [administrative
4 segregation] for weeks based solely upon safety concerns caused by the Department of
5 Corrections and Rehabilitation[’]s use of an unfiltered Lexis-Nexis inmate law computer program
6” ECF No. 1 at 6. The complaint alleges that inmates have been able to use the prison
7 computer to learn that plaintiff is a sex offender. As a result, plaintiff has allegedly been
8 assaulted or threatened with assault, and his status as a sex offender has become common
9 knowledge among the Level IV Enhanced Outpatient Program inmates at prisons throughout the
10 State. When plaintiff’s safety is threatened, prison officials allegedly retain plaintiff in
11 administrative segregation while an investigation is conducted. Plaintiff claims that as a result of
12 being “warehoused” in administrative segregation, he has attempted suicide. Plaintiff does not
13 allege how or why the conditions in administrative segregation cause him to be suicidal. Plaintiff
14 also claims that his requests for referral to the Department Review Board for “out of level”
15 placement have been denied. However, plaintiff does not allege how his conditions of
16 confinement would differ if his request for “out of level” placement were granted.

17 To the extent plaintiff is alleging that defendants have violated a court order entered in
18 *Coleman*, plaintiff must seek relief for any such violation in the *Coleman* case. A plaintiff who is
19 a member of a class action for equitable relief from prison conditions may not maintain a
20 separate, individual suit for equitable relief involving the same subject matter of the class action.
21 *See Crawford v. Bell*, 599 F.2d 890, 892-93 (9th Cir. 1979); *see also McNeil v. Guthrie*, 945 F.2d
22 1163, 1165 (10th Cir. 1991) (“Individual suits for injunctive and equitable relief from alleged
23 unconstitutional prison conditions cannot be brought where there is an existing class action.”);
24 *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (per curiam) (“To allow individual
25 suits would interfere with the orderly administration of the class action and risk inconsistent
26 adjudications.”).

27 To the extent plaintiff is alleging that defendants have violated his privacy rights, simply
28 by allowing inmates to use computers to research matters of public record, he fails to state a

1 claim. *See, e.g., Lewis v. Delarosa*, No. C 15-2689 NC, 2015 U.S. Dist. LEXIS 139376, at *9
2 (N.D. Cal. Oct. 13, 2015) (“Plaintiff’s allegation that his right to informational privacy was
3 violated when his non-private identification information was published on the internet is not
4 included in even the outer confines of a federal right to informational privacy.”).

5 Moreover, plaintiff’s allegations (including those regarding inmate internet access,
6 placement in administrative segregation, and denials of requests for out of level placement), are
7 not too vague and conclusory to support an Eighth Amendment claim under the applicable
8 standards, discussed below. To proceed, plaintiff must file an amended complaint.

9 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
10 that a right secured by the Constitution or laws of the United States was violated, and (2) that the
11 alleged violation was committed by a person acting under the color of state law. *West v. Atkins*,
12 487 U.S. 42, 48 (1988).

13 An individual defendant is not liable on a civil rights claim unless the facts establish the
14 defendant’s personal involvement in the constitutional deprivation or a causal connection between
15 the defendant’s wrongful conduct and the alleged constitutional deprivation. *See Hansen v.*
16 *Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th Cir. 1978).
17 That is, 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*, 556 U.S. 662, 679 (2009).

19 The Eighth Amendment protects prisoners from inhumane methods of punishment and
20 from inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir.
21 2006). To show a violation of the Eighth Amendment, plaintiff must allege facts sufficient to
22 support a claim that prison officials knew of and disregarded a substantial risk of serious harm to
23 the plaintiff. *E.g., Farmer v. Brennan*, 511 U.S. 825, 847 (1994); *Frost v. Agnos*, 152 F.3d 1124,
24 1128 (9th Cir. 1998). Extreme deprivations are required to make out a conditions of confinement
25 claim, and only those deprivations denying the minimal civilized measure of life’s necessities are
26 sufficiently grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*,
27 503 U.S. 1, 9 (1992). Prison officials “must provide humane conditions of confinement,”
28 including “adequate food, clothing, shelter, and medical care.” *Farmer*, 511 U.S. at 832-33.

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

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

18 It is important to differentiate common law negligence claims of malpractice from claims
19 predicated on violations of the Eighth Amendment's prohibition of cruel and unusual punishment.
20 In asserting the latter, "[m]ere 'indifference,' 'negligence,' or 'medical malpractice' will not
21 support this cause of action." *Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir.
22 1980) (citing *Estelle v. Gamble*, 429 U.S. 97, 105-106 (1976); *see also Toguchi v. Chung*, 391
23 F.3d 1051, 1057 (9th Cir. 2004).

24 There are no constitutional requirements regarding how a grievance system is operated.
25 *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (holding that prisoner's claimed loss of
26 a liberty interest in the processing of his appeals does not violate due process because prisoners
27 lack a separate constitutional entitlement to a specific prison grievance system). Thus, plaintiff
28 may not impose liability on defendants simply because they played a role in processing plaintiff's

1 inmate appeals. *See Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993) (an administrative
2 “grievance procedure is a procedural right only, it does not confer any substantive right upon the
3 inmates. Hence, it does not give rise to a protected liberty interest requiring the procedural
4 protections envisioned by the fourteenth amendment.” (internal quotations omitted)).

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

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

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

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

20 Any amended complaint must be written or typed so that it so that it is complete in itself
21 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
22 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
23 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
24 F.3d 1467, 1474 (9th Cir. 1997) (the ““amended complaint supersedes the original, the latter
25 being treated thereafter as non-existent.””) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
26 1967)).

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

4 **IV. Summary of Order**

5 Accordingly, IT IS HEREBY ORDERED that:

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

14 Dated: February 23, 2017.

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16 EDMUND F. BRENNAN
17 UNITED STATES MAGISTRATE JUDGE
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