

1 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
2 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

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

6 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
7 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
8 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
9 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
10 678.

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

18 **II. Screening Order**

19 Plaintiff alleges that he was incarcerated at the Butte County Jail from approximately
20 November 15, 2015 until mid-February of 2016. ECF No. 22 at 5. He claims that, during that
21 time, plumbing leaks caused a puddle to form in the middle of his cell. *Id.* at 5-6. He alleges that
22 the puddle – which he describes as containing toilet water, urine, and fecal matter – caused foul
23 odors to waft through his cell. *Id.* at 6. He also claims that he slipped more than once on this
24 puddle causing him to injure his knee. *Id.* at 7, 14. Plaintiff appears to contend that the named
25 defendants violated his Eighth Amendment rights by failing to adequately fix the leak or move
26 him to a different cell.

27 The Eighth Amendment forbids inhumane conditions of confinement. *Morgan v.*
28 *Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006). Only extreme deprivations will give rise to a

1 cognizable conditions of confinement claim, however. *Hudson v. McMillian*, 503 U.S. 1, 9
2 (1992) (citations and quotations omitted). To sustain such a claim a prisoner must show that “the
3 prison official deprived the prisoner of the ‘minimal civilized measure of life's necessities,’” and
4 that “the prison official ‘acted with deliberate indifference in doing so.’” *Toguchi v. Chung*, 391
5 F.3d 1051, 1057 (9th Cir. 2004). A defendant acts with deliberate indifference only where he
6 “knows of and disregards an excessive risk to inmate health and safety.” *Id.* Under this standard
7 “the official must both be aware of facts from which the inference could be drawn that a
8 substantial risk of serious harm exists, and he must also draw the inference.” *Farmer v. Brennan*,
9 511 U.S. 825, 837 (1994). Negligence, even gross negligence, is not equivalent to deliberate
10 indifference. *Lemire v. Cal. Dep’t of Corr. & Rehab.*, 726 F.3d 1062, 1082 (9th Cir. Cal. 2013)
11 (discussing deliberate indifference in the context of inmate medical care).

12 The court concludes that the allegations in plaintiff’s complaint, viewed in the light most
13 favorable to him, while troubling, fail to demonstrate that any of the named defendants acted with
14 deliberate indifference. By his own allegations, the jail staff attempted to respond to his
15 complaints.

16 Plaintiff alleges that he submitted an inmate request regarding the plumbing leak “on or
17 about” January 16, 2016. ECF No. 22 at 7. Prison officials responded to this request on January
18 18, 2016 and informed plaintiff that the issue was on the prison maintenance log. *Id.* Plaintiff
19 filed a grievance on January 20 regarding this same issue and, on January 21, maintenance
20 workers attempted to fix the leak. *Id.* at 7-8. Plaintiff alleges that this maintenance work did not
21 fix the leak, but he acknowledges that maintenance continued to work on the problem on three
22 separate occasions, first on January 25 and again on two unspecified dates between January 26
23 and February 10. *Id.* at 10-11. These repeated attempts to fix the leak, though plaintiff avers that
24 each was unsuccessful, weigh strongly against a finding that the defendants knew of and
25 disregarded an excessive risk to his safety. Plaintiff’s allegations also indicate that several of the
26 defendants came to his cell on a number of occasions in order to ascertain whether the problem
27 had been resolved. *Id.* at 9, 11, 13. These efforts also militate against a finding of deliberate
28 indifference.

1 Plaintiff's claims for slip and fall injuries also fail to state a cognizable Eighth
2 Amendment claim.¹ Courts have routinely held that slip and fall injuries do not give rise to
3 cognizable constitutional claims and instead sound in negligence. *See Jackson v. Arizona*, 885
4 F.2d 639, 641 (9th Cir. 1989), superseded by statute as stated in *Lopez v. Smith*, 203 F.3d 1122,
5 1130-31 (9th Cir. 2000) (holding that slippery prison floors "do not state even an arguable claim
6 for cruel and unusual punishment."); *Reynolds v. Powell*, 370 F.3d 1028, 1031 (10th Cir. 2004)
7 ("Simply put, a slip and fall, without more, does not amount to cruel and unusual punishment
8 Remedy for this type of injury, if any, must be sought in state court under traditional tort law
9 principles." (internal quotations, brackets and citation omitted)); *Aaronian v. Fresno County Jail*,
10 2010 U.S. Dist. LEXIS 137724, 2010 WL 5232969, at *2 & *3 (E.D. Cal. 2010) (claim that
11 plumbing leak caused plaintiff to fall did not raise a cognizable conditions of confinement claim).

12 To be sure, deliberate indifference to conditions known to present a danger of a slip and
13 fall might support an Eighth Amendment claim. The Ninth Circuit has held that slippery floors
14 could give rise to a constitutional claim in the case of an inmate who was on crutches and had
15 fallen several times. *Frost v. Agnos*, 152 F.3d 1124, 1129 (9th Cir. 1998). In *Frost*, the appellate
16 court described the facts as follows:

17 In his complaint, Frost claims that the conditions of his confinement resulted in
18 further injury to his leg. For example, he alleges that he had difficulty showering
19 because he was unable to maneuver his crutches on the slippery bathroom floor
20 and over the wall surrounding the shower. As a result, he often fell on his injured
21 leg. Although jail officials placed Frost in the handicapped housing unit for a brief
22 duration, he later was returned to a cell that lacked adequate handicapped shower
23 facilities. Moreover, he asserts that he slipped several times as he attempted to
24 carry his food-tray while balancing himself on crutches.

25 *Id.* at 1127. But the present allegations are distinguishable from *Frost* insofar as plaintiff does not
26 claim that he was hampered by any movement disability of which defendants were aware. Even
27 taking plaintiff's claims that he fell twice into account, his complaint simply does not rise to the
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¹ It is unclear whether plaintiff is, in addition to his conditions of confinement claims, attempting to bring a claim based on denial or delay of medical care for these injuries. Regardless, none of the defendants are alleged to have any involvement in his medical care. Additionally, plaintiff's allegations do not articulate any specific complaints against the prison medical staff that examined him after both falls. ECF No. 22 at 11, 15.

1 magnitude of the violations alleged in *Frost*. Further, as noted, plaintiff's own allegations
2 indicate that jail staff were not ignoring the problem.

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

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

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

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

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

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

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1 Accordingly, it is ORDERED that the amended complaint (ECF No. 22) is dismissed with
2 leave to amend within 30 days. The complaint must bear the docket number assigned to this case
3 and be titled "Second Amended Complaint." Failure to comply with this order will result in
4 dismissal of this action for failure to prosecute. If plaintiff files an amended complaint stating a
5 cognizable claim the court will proceed with service of process by the United States Marshal.

6 DATED: March 28, 2017.

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8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE
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