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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL Q. ARVISO,
Plaintiff,
v.
DR. CHAPNICK, et al.,
Defendants.

No. 2:16-cv-1414-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. He has filed an application for leave to proceed *in forma pauperis*.

I. Request to Proceed In Forma Pauperis

Plaintiff’s application (ECF No. 2) 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).

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 The court has reviewed the complaint (ECF No. 1) pursuant to § 1915A and finds that it
25 fails to state a viable claim. Plaintiff has articulated three separate claims in his complaint,
26 namely: (1) that defendant Malet removed his lower bunk ‘chrono’; (2) that both of his knees
27 require surgery and these procedures have not yet taken place; and (3) that his ear drum also
28 requires surgery and this need has not been met. *Id.* at 3. The Federal Rules of Civil Procedure

1 do not allow a claimant to raise unrelated claims against different defendants in a single action.
2 Instead, a plaintiff may add multiple parties where the asserted right to relief arises out of the
3 “same transaction, occurrence, or series of transactions or occurrences.” Fed. R. Civ. P.
4 20(a)(2)(A). Unrelated claims involving different defendants must be brought in separate
5 lawsuits. *Bryant v. Romero*, No. 1:12-CV-02074-DLB PC, 2013 U.S. Dist. LEXIS 157159, 2013
6 WL 5923108, at *2 (E.D. Cal. Nov. 1, 2013) (citing *George v. Smith*, 507 F.3d 605, 607 (7th Cir.
7 2007)). The complaint, as it stands, does not sufficiently allege a connection between the three
8 aforementioned claims.

9 Additionally, plaintiff’s intention appears to be to assert various Eighth Amendment
10 claims of deliberate indifference. However, he has not pleaded sufficient facts to state a proper
11 claim for relief. Although the Federal Rules adopt a flexible pleading policy, a complaint must
12 give fair notice and state the elements of the claim plainly and succinctly. *Jones v. Community*
13 *Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege, with at least some
14 degree of particularity, overt acts which defendants engaged in that support plaintiff’s claim. *Id.*

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

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

1 884 F.2d 1312, 1314 (9th Cir. 1989). A failure to competently treat a serious medical condition,
2 even if some treatment is prescribed, may constitute deliberate indifference in a particular case.

3 *Id.*

4 It is important to differentiate common law negligence claims of malpractice from claims
5 predicated on violations of the Eighth Amendment's prohibition of cruel and unusual punishment.
6 In asserting the latter, "[m]ere 'indifference,' 'negligence,' or 'medical malpractice' will not
7 support this cause of action." *Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir.
8 1980) (citing *Estelle*, 429 U.S. at 105-06); *see also Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th
9 Cir. 2004). Plaintiff must show a deliberate disregard for a known medical need. The Ninth
10 Circuit has made clear that a difference of medical opinion is, as a matter of law, insufficient to
11 establish deliberate indifference. *See Toguchi*, 391 F.3d at 1058. "Rather, to prevail on a claim
12 involving choices between alternative courses of treatment, a prisoner must show that the chosen
13 course of treatment 'was medically unacceptable under the circumstances,' and was chosen 'in
14 conscious disregard of an excessive risk to [the prisoner's] health.'" *Id.* (quoting *Jackson v.*
15 *McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996)).

16 Based on the foregoing, plaintiff fails to state a claim for relief and his complaint must be
17 dismissed. Plaintiff may, if he chooses, amend his complaint to correct these deficiencies. *Lopez*
18 *v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (district courts must afford pro se
19 litigants an opportunity to amend to correct any deficiency in their complaints). Should plaintiff
20 choose to file an amended complaint, the amended complaint shall clearly set forth the claims and
21 allegations against each defendant. Any amended complaint must cure the deficiencies identified
22 above and also adhere to the following requirements:

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

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1 It must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).
2 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *George*
3 *v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

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

11 The court cautions plaintiff that failure to comply with the Federal Rules of Civil
12 Procedure, this court’s Local Rules, or any court order may result in this action being dismissed.
13 *See* E.D. Cal. L.R. 110.

14 Accordingly, IT IS HEREBY ORDERED that:

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

25 Dated: October 3, 2017.

26 
EDMUND F. BRENNAN
27 UNITED STATES MAGISTRATE JUDGE
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