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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARTHUR RAY DEERE, SR.,  
Plaintiff,  
v.  
CDC MEDICAL STAFF, et al.,  
Defendants.

No. 2:16-cv-1695-EFB P

ORDER DISMISSING COMPLAINT WITH  
LEAVE TO AMEND PURSUANT TO 28  
U.S.C. § 1915A

Plaintiff is a state prisoner proceeding without counsel and in forma pauperis in an action brought under 42 U.S.C. § 1983.<sup>1</sup> He has filed an amended complaint, ECF No. 21, which is now before the court for screening.

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

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<sup>1</sup> This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff’s consent. *See* E.D. Cal. Local Rules, Appx. A, at (k)(4).

1 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)  
2 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and  
3 plain statement of the claim showing that the pleader is entitled to relief, in order to give the  
4 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*  
5 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).  
6 While the complaint must comply with the “short and plain statement” requirements of Rule 8,  
7 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556  
8 U.S. 662, 679 (2009).

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

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

## 21 **II. Screening Order**

22 The court has reviewed plaintiff’s amended complaint pursuant to § 1915A and concludes  
23 that it must be dismissed with leave to amend. It alleges that “CDC Medical Staff refused  
24 treatment for one reason or another until the hepatitis “C” virus ravaged [plaintiff’s] liver and . . .  
25 gave [plaintiff] treatment after [his] liver was destroyed beyond repair and condemning [plaintiff]  
26 to a slow and painful death.” ECF No. 21, § IV. It names CDC Medical Staff, Dr. Rudas, and  
27 Dr. Chau as defendants and seeks damages as relief. *Id.* at 1, §§ II, IV. As discussed below, the  
28 complaint must be dismissed because it names unidentifiable defendants, fails to properly link the

1 identified defendants to a deprivation of plaintiff's federal rights, and is otherwise too vague and  
2 conclusory to state a claim upon which relief could be granted.

3 First, the complaint improperly names unidentified CDC Medical Staff as defendants.  
4 Unknown persons cannot be served with process until they are identified by their real names and  
5 the court will not investigate the names and identities of unnamed defendants. If the court  
6 ultimately orders service by the U.S. Marshal of any amended complaint, and plaintiff  
7 subsequently learns the identity of a party he wishes to serve, he may move pursuant to Rule 15  
8 of the Federal Rules of Civil Procedure to file another amended complaint to add that individual  
9 as a defendant.<sup>2</sup> See *Brass v. County of Los Angeles*, 328 F.3d 1192, 1197-98 (9th Cir. 2003).

10 Second, the complaint identifies two individual defendants but fails to allege how either  
11 one of them was personally involved in the alleged violation of plaintiff's rights. To state a claim  
12 under § 1983, a plaintiff must allege: (1) the violation of a federal constitutional or statutory right;  
13 and (2) that the violation was committed by a person acting under the color of state law. See *West*  
14 *v. Atkins*, 487 U.S. 42, 48 (1988); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). An  
15 individual defendant is not liable on a civil rights claim unless the facts establish the defendant's  
16 personal involvement in the constitutional deprivation or a causal connection between the  
17 defendant's wrongful conduct and the alleged constitutional deprivation. See *Hansen v. Black*,  
18 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th Cir. 1978).  
19 Although the Federal Rules adopt a flexible pleading policy, plaintiff must allege with at least  
20 some degree of particularity overt acts which defendants engaged in that support plaintiff's claim.  
21 *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff may not sue any  
22 official on the theory that the official is liable for the unconstitutional conduct of his or her  
23 subordinates. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Because respondeat superior liability  
24 is inapplicable to § 1983 suits, "a plaintiff must plead that each Government-official defendant,  
25 through the official's own individual actions, has violated the Constitution." *Id.*

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27 <sup>2</sup> If the timing of an amended complaint raises questions as to the statute of limitations,  
28 plaintiff must satisfy the requirements of Rule 15(c), which is the controlling procedure for  
adding defendants whose identities were discovered after commencement of the action.

1 Third, the complaint fails to plead facts sufficient to state a claim of deliberate  
2 indifference to medical needs in violation of the Eighth Amendment. To succeed on an Eighth  
3 Amendment claim predicated on the denial of medical care, a plaintiff must establish that he had  
4 a serious medical need and that the defendant's response to that need was deliberately indifferent.  
5 *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006); *see also Estelle v. Gamble*, 429 U.S. 97, 106  
6 (1976). A serious medical need exists if the failure to treat the condition could result in further  
7 significant injury or the unnecessary and wanton infliction of pain. *Jett*, 439 F.3d at 1096.  
8 Deliberate indifference may be shown by the denial, delay or intentional interference with  
9 medical treatment or by the way in which medical care is provided. *Hutchinson v. United States*,  
10 838 F.2d 390, 394 (9th Cir. 1988).

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

20 It is important to differentiate common law negligence claims of malpractice from claims  
21 predicated on violations of the Eighth Amendment's prohibition of cruel and unusual punishment.  
22 In asserting the latter, "[m]ere 'indifference,' 'negligence,' or 'medical malpractice' will not  
23 support this cause of action." *Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir.  
24 1980) (citing *Estelle v. Gamble*, 429 U.S. 97, 105-106 (1976); *see also Toguchi v. Chung*, 391  
25 F.3d 1051, 1057 (9th Cir. 2004).

26 For these reasons, the amended complaint is dismissed with leave to amend. Plaintiff will  
27 be granted leave to file an amended complaint, if plaintiff can allege a cognizable legal theory  
28 against a proper defendant and sufficient facts in support of that cognizable legal theory. *Lopez v.*

1 *Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (district courts must afford pro se  
2 litigants an opportunity to amend to correct any deficiency in their complaints). Should plaintiff  
3 choose to file an amended complaint, the amended complaint shall clearly set forth the claims and  
4 allegations against each defendant.

5 Any amended complaint must not exceed the scope of this order and may not add new,  
6 unrelated claims. Further, any amended complaint must cure the deficiencies identified above  
7 and also adhere to the following requirements:

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

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

21 Finally, the court cautions plaintiff that failure to comply with the Federal Rules of Civil  
22 Procedure, this court's Local Rules, or any court order may result in this action being dismissed.  
23 *See E.D. Cal. L.R. 110.*

### 24 **III. Summary of Order**

25 Accordingly, IT IS HEREBY ORDERED that the amended complaint (ECF No. 21) is  
26 dismissed with leave to amend within 30 days. The second amended complaint must bear the  
27 docket number assigned to this case and be titled “Second Amended Complaint.” Failure to  
28 comply with this order will result in this action being dismissed for failure to state a claim and/or

1 failure to prosecute. If plaintiff files a second amended complaint stating a cognizable claim the  
2 court will proceed with service of process by the United States Marshal.

3 DATED: October 4, 2017.

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5 EDMUND F. BRENNAN  
6 UNITED STATES MAGISTRATE JUDGE  
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