

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 Liberally construed, and for the limited purposes of § 1915A screening, the second
25 amended complaint¹ states potentially cognizable Eighth Amendment claims of deliberate

26 ¹ Plaintiff has filed three complaints in this action. ECF Nos 1, 5, & 8. In screening this
27 action, the court looks exclusively to the most recent second amended complaint (ECF No. 8).
28 *See Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1989)
(holding that an amended pleading supersedes the original).

1 indifference to mental health needs against defendants Kentner, Romano, Blain, Jerusik, Wallis,
2 Telander, Farris, and Coffin, all of whom allegedly refused to provide plaintiff with
3 medical/mental health treatment in response to plaintiff's threats of self-harm, notwithstanding
4 plaintiff's history of attempted suicide. As discussed below, the other named defendants and
5 claims are dismissed with leave to amend for failure to state a claim and/or improper joinder.

6 First, the complaint fails to state a cognizable claim against defendants Lowry, Yanez,
7 Pickering, or Carr.² To state a claim under § 1983, a plaintiff must allege: (1) the violation of a
8 federal constitutional or statutory right; and (2) that the violation was committed by a person
9 acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988); *Jones v. Williams*,
10 297 F.3d 930, 934 (9th Cir. 2002). An individual defendant is not liable on a civil rights claim
11 unless the facts establish the defendant's personal involvement in the constitutional deprivation or
12 a causal connection between the defendant's wrongful conduct and the alleged constitutional
13 deprivation. *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d
14 740, 743-44 (9th Cir. 1978). Plaintiff may not sue any official on the theory that the official is
15 liable for the unconstitutional conduct of his or her subordinates. *Ashcroft v. Iqbal*, 556 U.S. 662,
16 679 (2009). He must identify the particular person or persons who violated his rights. He must
17 also plead facts showing how that particular person was involved in the alleged violation.
18 Although the Federal Rules adopt a flexible pleading policy, plaintiff must allege with at least
19 some degree of particularity overt acts which defendants engaged in that support plaintiff's claim.
20 *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984). Here, plaintiff names
21 Lowry and Yanez as defendants, but includes no factual allegations against them. He also names
22 Pickering, and Carr as defendants, but includes only a conclusory allegation that they "refused to
23 abide by CDC's policy to provide adequate medical and mental health services." ECF No. 8 at
24 13. Plaintiff may not proceed on any claims against these defendants because the complaint fails
25 to adequately link them to any federal constitutional or statutory violation of his rights.

26 ² In addition, the complaint improperly names "Mule Creek Medical Staff" and "Mule
27 Creek Correctional Staff" as defendants. Unknown persons cannot be served with process until
28 they are identified by their real names and that the court will not investigate the names and
identities of unnamed defendants

1 Second, plaintiff improperly asserts claims that are unrelated to the potentially cognizable
2 Eighth Amendment claims he asserts against defendants Kentner, Romano, Blain, Jerusik, Wallis,
3 Telander, Farris, and Coffin. Specifically, the complaint alleges: (1) that on October 29, 2015,
4 plaintiff was subjected to an unreasonable body cavity search; and (2) that on February 25, 2016,
5 a laptop computer containing plaintiff's personal information was stolen from the vehicle of a
6 medical employee. The Federal Rules of Civil Procedure do not allow a claimant to raise
7 unrelated claims against different defendants in a single action. Instead, a plaintiff may add
8 multiple parties where the asserted right to relief arises out of the same transaction or occurrence
9 and a common question of law or fact will arise in the action. *See* Fed. R. Civ. P. 20(a)(2). These
10 unrelated claims, which involve different defendants, must be brought in separate lawsuits.³

11 Third, plaintiff fails to state a cognizable Eighth Amendment deliberate indifference claim
12 against defendant Ivey, plaintiff's primary mental health doctor. ECF No. 8 at 9. Plaintiff claims
13 that during one of their sessions, when plaintiff was having difficulty communicating due to
14 depression and anxiety, Ivey became frustrated and told plaintiff, "I can't take you seriously." *Id.*
15 This isolated remark, without more, is not enough to demonstrate deliberate indifference to
16 plaintiff's serious mental health needs in violation of the Eighth Amendment.

17 To succeed on an Eighth Amendment claim predicated on the denial of medical care, a
18 plaintiff must establish that he had a serious medical need and that the defendant's response to
19 that need was deliberately indifferent. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006); *see*
20 *also Estelle v. Gamble*, 429 U.S. 97, 106 (1976). A serious medical need exists if the failure to
21 treat the condition could result in further significant injury or the unnecessary and wanton

22 ³ A plaintiff may properly assert multiple claims against a single defendant. Fed. Rule
23 Civ. P. 18. In addition, a plaintiff may join multiple defendants in one action where "any right to
24 relief is asserted against them jointly, severally, or in the alternative with respect to or arising out
25 of the same transaction, occurrence, or series of transactions and occurrences" and "any question
26 of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2).
27 Unrelated claims against different defendants must be pursued in separate lawsuits. *See George v.*
28 *Smith*, 507 F.3d 605, 607 (7th Cir. 2007). This rule is intended "not only to prevent the sort of
morass [a multiple claim, multiple defendant] suit produce[s], but also to ensure that prisoners
pay the required filing fees – for the Prison Litigation Reform Act limits to 3 the number of
frivolous suits or appeals that any prisoner may file without prepayment of the required fees.
28 U.S.C. § 1915(g)." *Id.*

1 infliction of pain. *Jett*, 439 F.3d at 1096. Deliberate indifference may be shown by the denial,
2 delay or intentional interference with medical treatment or by the way in which medical care is
3 provided. *Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988).

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

13 It is important to differentiate common law negligence claims of malpractice from claims
14 predicated on violations of the Eight Amendment’s prohibition of cruel and unusual punishment.
15 In asserting the latter, “[m]ere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not
16 support this cause of action.” *Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir.
17 1980) (citing *Estelle v. Gamble*, 429 U.S. 97, 105-106 (1976); see also *Toguchi v. Chung*, 391
18 F.3d 1051, 1057 (9th Cir. 2004)).

19 Based on the foregoing, plaintiff may either proceed only on the potentially cognizable
20 Eighth Amendment claims against defendants Kentner, Romano, Blain, Jerusik, Wallis, Telander,
21 Farris, and Coffin identified above or he may amend his complaint to attempt to cure the
22 complaint’s deficiencies. Plaintiff is not obligated to amend his complaint.

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).

28 ////

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. Local Rule 110.

14 **IV. Motion for Preliminary Injunction**

15 Plaintiff seeks a preliminary injunction in the form of a court order that would prevent
16 defendants Ivey and Jerusik from being assigned to plaintiff as his primary case manager or
17 clinician. ECF No. 2. However, he fails to meet the minimum threshold for merit to satisfy the
18 standard for a preliminary injunction.⁴ At an irreducible minimum, he must demonstrate that
19 there is at least a fair chance of success on the merits. *Johnson v. California State Board of*
20 *Accountancy*, 72 F.3d 1427, 1430, 1433 (9th Cir. 1995); *Sports Form, Inc. v. United Press*
21 *International*, 686 F.2d 750, 753 (9th Cir. 1982). As discussed above, the claim against
22 defendant Ivey is dismissed, and although the complaint states a potentially cognizable claim
23 against defendant Jerusik, plaintiff has not shown any likelihood of success on the merits of that

24
25 ⁴ A preliminary injunction represents the exercise of a far reaching power not to be
26 indulged except in a case clearly warranting it. *Dymo Indus. v. Tapeprinter, Inc.*, 326 F.2d 141,
27 143 (9th Cir.1964). The moving party must prove that he is likely to succeed on the merits, that
28 he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of
equities tips in his favor, and that an injunction is in the public interest. *Stormans, Inc. v. Selecky*,
586 F.3d 1109, 1127 (9th Cir.2009) (citing *Winter v. Natural Res. Def. Council, Inc.*, — U.S. —
—, 129 S.Ct. 365, 375–76, 172 L.Ed.2d 249 (2008)).

1 claim. Accordingly, plaintiff's motion must be denied.

2 **V. Summary of Order**

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. Plaintiff's request to proceed in forma pauperis (ECF No. 3) is granted.
- 5 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected
6 in accordance with the notice to the California Department of Corrections and
7 Rehabilitation filed concurrently herewith.
- 8 3. The allegations in the pleading are sufficient to state potentially cognizable Eighth
9 Amendment claims of deliberate indifference to mental health needs against
10 defendants Kentner, Romano, Blain, Jerusik, Wallis, Telander, Farris, and Coffin.
11 All other claims and defendants are dismissed with leave to amend within 30 days
12 of service of this order. Plaintiff is not obligated to amend his complaint.
- 13 4. With this order the Clerk of the Court shall provide to plaintiff a blank summons, a
14 copy of the September 27, 2016 second amended complaint, eight USM-285 forms
15 and instructions for service of process on defendants Kentner, Romano, Blain,
16 Jerusik, Wallis, Telander, Farris, and Coffin. Within 30 days of service of this
17 order plaintiff may return the attached Notice of Submission of Documents with
18 the completed summons, the completed USM-285 forms, and nine copies of the
19 endorsed complaint. The court will transmit them to the United States Marshal for
20 service of process pursuant to Rule 4 of the Federal Rules of Civil Procedure.
21 Defendants will be required to respond to plaintiff's allegations within the
22 deadlines stated in Rule 12(a)(1) of the Federal Rules of Civil Procedure.
- 23 5. Failure to comply with this order may result in a recommendation that this action
24 be dismissed.

25 Further, IT IS HEREBY RECOMMENDED that plaintiff's motion for a preliminary
26 injunction (ECF No. 2) be denied.

27 These findings and recommendations are submitted to the United States District Judge
28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

1 after being served with these findings and recommendations, any party may file written
2 objections with the court and serve a copy on all parties. Such a document should be captioned
3 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
4 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
5 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

6 Dated: February 21, 2017.

7 
8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DOMINIQUE MERRIMAN,

Plaintiff,

v.

JAMES TELANDER, et al.,

Defendants.

No. 2:16-cv-2030-JAM-EFB P

NOTICE OF SUBMISSION OF
DOCUMENTS

In accordance with the court’s Screening Order, plaintiff hereby elects to:

(1) _____ proceed only with the claims identified in the Screening Order as potentially cognizable Eighth Amendment claims of deliberate indifference to mental health needs against defendants Kentner, Romano, Blain, Jerusik, Wallis, Telander, Farris, and Coffin, and submits the following documents:

- 1 completed summons form
- 8 completed forms USM-285
- 9 copies of the September 27, 2016 second amended complaint

OR

(2) _____ delay serving any defendant and files an amended complaint in accordance with the court’s Screening Order.

Dated:

Plaintiff