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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID CABALLERO-SALGADO,
Plaintiff,
v.
YUBA COUNTY JAIL,
Defendant.

No. 2:16-cv-2129-EFB P

ORDER GRANTING IFP AND DISMISSING
COMPLAINT WITH LEAVE TO AMEND

Plaintiff is a county prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. 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). 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 In the complaint (ECF No. 1), plaintiff names the Yuba County Jail as the defendant. He
25 alleges (1) that he lost a molar tooth due to the negligence of the Yuba County Kitchen, when he
26 bit into a pebble or rock of some sort while chewing his food; and (2) that he has been denied
27 medical care for an injured and very painful thumb. For the reasons explained below, the
28 complaint is dismissed with leave to amend.

1 First, the complaint does not identify any claims for relief. To state a claim under § 1983,
2 a plaintiff must allege: (1) the violation of a federal constitutional or statutory right; and (2) that
3 the violation was committed by a person acting under the color of state law. *See West v. Atkins*,
4 487 U.S. 42, 48 (1988); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). An individual
5 defendant is not liable on a civil rights claim unless the facts establish the defendant's personal
6 involvement in the constitutional deprivation or a causal connection between the defendant's
7 wrongful conduct and the alleged constitutional deprivation. *See Hansen v. Black*, 885 F.2d 642,
8 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th Cir. 1978).

9 Second, the complaint fails to state a claim against the Yuba County Jail because it does
10 not sufficiently allege that plaintiff was injured as a result of employees acting pursuant to any
11 policy or custom of the County. A municipal entity or its departments is liable under section
12 1983 only if plaintiff shows that his constitutional injury was caused by employees acting
13 pursuant to the municipality's policy or custom. *Mt. Healthy City Sch. Dist. Bd. of Ed. v. Doyle*,
14 429 U.S. 274, 280 (1977); *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658, 691
15 (1978); *Villegas v. Gilroy Garlic Festival Ass'n*, 541 F.3d 950, 964 (9th Cir. 2008). Local
16 government entities may not be held vicariously liable under section 1983 for the unconstitutional
17 acts of its employees under a theory of respondeat superior. *See Board of Cty. Comm'rs. v.*
18 *Brown*, 520 U.S. 397, 403 (1997).

19 Third, the complaint appears to improperly join unrelated claims in a single lawsuit. The
20 Federal Rules of Civil Procedure do not allow a claimant to raise unrelated claims against
21 different defendants in a single action. Instead, a plaintiff may add multiple parties where the
22 asserted right to relief arises out of the same transaction or occurrence and a common question of
23 law or fact will arise in the action. *See Fed. R. Civ. P. 20(a)(2)*. Unrelated claims involving
24 different defendants must be brought in separate lawsuits.¹

25 ¹ A plaintiff may properly assert multiple claims against a single defendant. Fed. Rule
26 Civ. P. 18. In addition, a plaintiff may join multiple defendants in one action where "any right to
27 relief is asserted against them jointly, severally, or in the alternative with respect to or arising out
28 of the same transaction, occurrence, or series of transactions and occurrences" and "any question
of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2).

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1 Fourth, the allegations of negligence are not sufficient to establish a violation of plaintiff's
2 constitutional rights. Under the Eighth Amendment, a prisoner must show that the defendant
3 acted with "deliberate indifference" to his health or safety. *Farmer v. Brennan*, 511 U.S. 825,
4 834 (1994). To do so, the prisoner must establish that the defendant knew of and disregarded an
5 excessive risk to his health or safety. *Id.* at 837, 842 (knowledge can be inferred from the
6 obviousness of the risk). With regard to food, the Eighth Amendment is not implicated if prison
7 food fails to be "tasty or aesthetically pleasing," but only if inadequate "to maintain normal
8 health." *LeMaire v. Maass*, 12 F.3d 1444, 1456 (9th Cir. 1993).

9 Finally, the allegations fail to demonstrate that any particular defendant responded to
10 plaintiff's medical or dental needs with deliberate indifference in violation of the Eighth
11 Amendment. To succeed on an Eighth Amendment claim predicated on the denial of medical
12 care, a plaintiff must establish that he had a serious medical need and that the defendant's
13 response to that need was deliberately indifferent. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir.
14 2006); *see also Estelle v. Gamble*, 429 U.S. 97, 106 (1976). A serious medical need exists if the
15 failure to treat the condition could result in further significant injury or the unnecessary and
16 wanton infliction of pain. *Jett*, 439 F.3d at 1096. Deliberate indifference may be shown by the
17 denial, delay or intentional interference with medical treatment or by the way in which medical
18 care is provided. *Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988).

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

25 Unrelated claims against different defendants must be pursued in separate lawsuits. *See George v.*
26 *Smith*, 507 F.3d 605, 607 (7th Cir. 2007). This rule is intended "not only to prevent the sort of
27 morass [a multiple claim, multiple defendant] suit produce[s], but also to ensure that prisoners
28 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.*

1 884 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 Eight 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 v. Gamble*, 429 U.S. 97, 105-106 (1976); see also *Toguchi v. Chung*, 391
9 F.3d 1051, 1057 (9th Cir. 2004).

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

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

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

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

25 Any amended complaint must be written or typed so that it so that it is complete in itself
26 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
27 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
28 earlier filed complaint no longer serves any function in the case. See *Forsyth v. Humana*, 114

1 F.3d 1467, 1474 (9th Cir. 1997) (the “‘amended complaint supersedes the original, the latter
2 being treated thereafter as non-existent.’”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
3 1967)).

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

7 **IV. Summary of Order**

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff’s request to proceed in forma pauperis (ECF No. 7) is granted.
- 10 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in
11 accordance with the notice to the Yuba County Sheriff’s Office filed concurrently herewith.
- 12 3. The complaint is dismissed with leave to amend within 30 days. The amended
13 complaint must bear the docket number assigned to this case and be titled “First Amended
14 Complaint.” Failure to comply with this order will result in this action being dismissed for failure
15 to state a claim. If plaintiff files an amended complaint stating a cognizable claim the court will
16 proceed with service of process by the United States Marshal.

17 Dated: November 14, 2017.

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19 EDMUND F. BRENNAN
20 UNITED STATES MAGISTRATE JUDGE
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