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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TREMAYNE DEON CARROLL,  
Plaintiff,  
v.  
SPEARMAN, Warden, et al.,  
Defendants.

No. 2:16-cv-2443-JAM-EFB P

ORDER GRANTING IFP AND DISMISSING  
COMPLAINT PURSUANT TO 28 U.S.C. §  
1915A AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. In addition to filing a complaint, plaintiff has filed an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915, a request for appointment of counsel, and a motion for preliminary injunctive relief.

**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.

1 § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion  
2 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which  
3 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such  
4 relief.” *Id.* § 1915A(b).

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

13 To avoid dismissal for failure to state a claim a complaint must contain more than “naked  
14 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of  
15 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of  
16 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at  
17 678.

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

### 25 **III. Screening Order**

26 The court has reviewed plaintiff’s complaint pursuant to § 1915A, which names the  
27 following defendants: Warden Spearman; High Desert State Prison (HDSP) Medical Staff  
28 Supervisor; HDSP Mental Health Staff Supervisor; and LVN Valdez. The complaint includes the

1 following allegations: (1) the California Medical Facility and HDSP retaliated against plaintiff for  
2 reporting employee sexual misconduct; (2) the HDSP “hiring authority” failed to ensure safe  
3 conditions for wheelchair users, which caused plaintiff to fall; (3) plaintiff was subsequently  
4 denied medical care and safer housing; and (4) defendant Valdez, along with non-defendants  
5 Cervantez and Ayaly, falsified a rules violation report in retaliation for plaintiff’s complaints of  
6 sexual misconduct and to cover-up the fact that plaintiff was injured when he fell on HDSP  
7 grounds. As set forth below, the complaint improperly names unknown defendants, improperly  
8 attempts to impose liability on the Warden because of his role as a supervisor, and otherwise fails  
9 to state a cognizable claim under the applicable standards.

10 First, plaintiff’s inclusion of unnamed or “Doe” defendants is problematic. Unknown  
11 persons cannot be served with process until they are identified by their real names and the court  
12 will not investigate the names and identities of unnamed defendants. In addition, the complaint  
13 purports to assert claims against entities or individuals who are not identified as defendants. A  
14 complaint must, however, provide defendants with fair notice of the claims against them. If  
15 plaintiff wishes to pursue a claim against any entity or individual, he must properly identify the  
16 entity or individual as a defendant. *See* Fed. R. Civ. P. 10(a).

17 Second, plaintiff appears to have named Warden Spearman simply because of his role as a  
18 supervisor, or as the “hiring authority” at HDSP. ECF No. 3 at 5. The complaint fails to state a  
19 claim against defendant Spearman because it does not show how Spearman, through his own  
20 individual actions, has violated plaintiff’s rights. Plaintiff may not sue any official on the theory  
21 that the official is liable for the unconstitutional conduct of his or her subordinates. *Ashcroft v.*  
22 *Iqbal*, 556 U.S. 662, 679 (2009). Because respondeat superior liability is inapplicable to § 1983  
23 suits, “a plaintiff must plead that each Government-official defendant, through the official’s own  
24 individual actions, has violated the Constitution.” *Id.* The claim against defendant Spearman is  
25 therefore dismissed with leave to amend.

26 Third, the complaint fails to state a proper claim for relief pursuant to 42 U.S.C. § 1983.  
27 The complaint purports to assert First Amendment retaliation and Eighth Amendment claims  
28 against defendants Valdez, Spearman, and two unknown defendants. However, plaintiff has not

1 pleaded sufficient facts to state a claim for relief. Although the Federal Rules adopt a flexible  
2 pleading policy, a complaint must give fair notice and state the elements of the claim plainly and  
3 succinctly. *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must  
4 allege with at least some degree of particularity overt acts which defendants engaged in that  
5 support plaintiff's claim. *Id.*

6 To state a claim under § 1983, a plaintiff must allege: (1) the violation of a federal  
7 constitutional or statutory right; and (2) that the violation was committed by a person acting under  
8 the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988); *Jones v. Williams*, 297 F.3d  
9 930, 934 (9th Cir. 2002). An individual defendant is not liable on a civil rights claim unless the  
10 facts establish the defendant's personal involvement in the constitutional deprivation or a causal  
11 connection between the defendant's wrongful conduct and the alleged constitutional deprivation.  
12 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44  
13 (9th Cir. 1978). Plaintiff must identify the particular person or persons who violated his rights.  
14 He must also plead facts showing how that particular person was involved in the alleged  
15 violation.

16 To state a viable First Amendment retaliation claim, a prisoner must allege five elements:  
17 "(1) An assertion that a state actor took some adverse action against an inmate (2) because of (3)  
18 that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First  
19 Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal."  
20 *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005). If plaintiff intends to assert a  
21 retaliation claim, he must allege facts showing that defendants were aware of his prior  
22 engagement in protected conduct and that his protected conduct was "the 'substantial' or  
23 'motivating' factor" behind their alleged misconduct. *Brodheim v. Cry*, 584 F.3d 1262, 1271 (9th  
24 Cir. 2009). Generally speaking, a retaliation claim cannot rest on the logical fallacy of *post hoc*,  
25 *ergo propter hoc*, literally, "after this, therefore because of this." *See Huskey v. City of San Jose*,  
26 204 F.3d 893, 899 (9th Cir. 2000).

27 A prison official violates the Eighth Amendment's proscription of cruel and unusual  
28 punishment where he or she deprives a prisoner of the minimal civilized measure of life's

1 necessities with a “sufficiently culpable state of mind.” *Farmer v. Brennan*, 511 U.S. 825, 834  
2 (1994). To state such an Eighth Amendment claim, a prisoner must allege facts showing that (1)  
3 the defendant prison official’s conduct deprived him or her of the minimal civilized measure of  
4 life’s necessities and (2) that the defendant acted with deliberate indifference to the prisoner’s  
5 health or safety. *Id.* at 834. Plaintiff’s scant allegations fail to demonstrate that any particular  
6 state actor acted with the requisite deliberate indifference or exposed him to a substantial risk of  
7 serious harm. The allegations thus fail to state a cognizable claim for cruel and unusual  
8 punishment.

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

17         To act with deliberate indifference, a prison official must both be aware of facts from  
18 which the inference could be drawn that a substantial risk of serious harm exists, and he must also  
19 draw the inference. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Thus, a defendant is liable if  
20 he knows that plaintiff faces “a substantial risk of serious harm and disregards that risk by failing  
21 to take reasonable measures to abate it.” *Id.* at 847. A physician need not fail to treat an inmate  
22 altogether in order to violate that inmate’s Eighth Amendment rights. *Ortiz v. City of Imperial*,  
23 884 F.2d 1312, 1314 (9th Cir. 1989). A failure to competently treat a serious medical condition,  
24 even if some treatment is prescribed, may constitute deliberate indifference in a particular case.  
25 *Id.*

26         It is important to differentiate common law negligence claims of malpractice from claims  
27 predicated on violations of the Eighth Amendment’s prohibition of cruel and unusual punishment.  
28 In asserting the latter, “[m]ere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not

1 support this cause of action.” *Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir.  
2 1980) (citing *Estelle v. Gamble*, 429 U.S. 97, 105-106 (1976); see also *Toguchi v. Chung*, 391  
3 F.3d 1051, 1057 (9th Cir. 2004).

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

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

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

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

19 Any amended complaint must be written or typed so that it so that it is complete in itself  
20 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended  
21 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the  
22 earlier filed complaint no longer serves any function in the case. See *Forsyth v. Humana*, 114  
23 F.3d 1467, 1474 (9th Cir. 1997) (the ““amended complaint supersedes the original, the latter  
24 being treated thereafter as non-existent.””) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.  
25 1967)).

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

1 **IV. Request for Appointment of Counsel**

2 Plaintiff requests that the court appoint counsel. District courts lack authority to require  
3 counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist.*  
4 *Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney  
5 to voluntarily to represent such a plaintiff. *See* 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935  
6 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990).  
7 When determining whether “exceptional circumstances” exist, the court must consider the  
8 likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro  
9 se in light of the complexity of the legal issues involved. *Palmer v. Valdez*, 560 F.3d 965, 970  
10 (9th Cir. 2009). Having considered those factors, the court finds there are no exceptional  
11 circumstances in this case.

12 **V. Motion for Preliminary Injunction**

13 Plaintiff also seeks injunctive relief. However, he fails to meet the minimum threshold for  
14 merit to satisfy the standard for a preliminary injunction.<sup>1</sup> At an irreducible minimum, he must  
15 demonstrate that there is at least a fair chance of success on the merits. *Johnson v. California*  
16 *State Board of Accountancy*, 72 F.3d 1427, 1430, 1433 (9th Cir. 1995); *Sports Form, Inc. v.*  
17 *United Press International*, 686 F.2d 750, 753 (9th Cir. 1982). As discussed above, his complaint  
18 must be dismissed for failure to state a claim and at present he has shown no likelihood of success  
19 on the merits of any claim. Accordingly, plaintiff’s motion must be denied.

20 **VI. Summary of Order and Recommendation**

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Plaintiff’s request to proceed in forma pauperis (ECF Nos. 4, 10) is granted.

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25 <sup>1</sup> 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)).

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- 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in accordance with the notice to the California Department of Corrections and Rehabilitation filed concurrently herewith.
- 3. The complaint is dismissed with leave to amend within 30 days. The complaint must bear the docket number assigned to this case and be titled “Amended Complaint.” Failure to comply with this order will result in dismissal of this action for failure to prosecute. If plaintiff files an amended complaint stating a cognizable claim the court will proceed with service of process by the United States Marshal.
- 4. Plaintiff’s request for appointment of counsel (ECF Nos. 5, 9) is denied without prejudice.

Further, it is hereby RECOMMENDED that plaintiff’s motion for a preliminary injunction (ECF No. 1) be denied as premature.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may waive the right to appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

DATED: August 3, 2017.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE