

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 plaintiff’s complaint (ECF No. 1) pursuant to § 1915A and finds
25 that the allegations are too vague and conclusory to state a cognizable claim for relief. The
26 complaint alleges that plaintiff experienced severe pain following a fall that occurred on October
27 1, 2014 and that he was subsequently denied adequate medical care. He claims that “no diagnosis
28 was made,” “[n]o adequate pain medication was prescribed,” and that he “was refused an MRI.”

1 He names Dr. Standig, Dr. Lee, Dr. Greenleaf, Nurse Milburn, Nurse Kayl, and LVN Madrigal as
2 defendants, but includes no allegations showing how any of these defendants was personally
3 involved in violating plaintiff's Eighth Amendment right to adequate medical care. As such,
4 plaintiff has not pleaded sufficient facts to state a proper claim for relief. Although the Federal
5 Rules adopt a flexible pleading policy, a complaint must give fair notice and state the elements of
6 the claim plainly and succinctly. *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir.
7 1984). Plaintiff must allege with at least some degree of particularity overt acts which defendants
8 engaged in that support plaintiff's claim. *Id.* Because plaintiff fails to state a claim for relief, the
9 complaint must be dismissed.

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 In addition, the court notes that the following legal standards may apply to plaintiff’s
8 intended claim for relief.

9 To state a claim under § 1983, a plaintiff must allege: (1) the violation of a federal
10 constitutional or statutory right; and (2) that the violation was committed by a person acting under
11 the color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988); *Jones v. Williams*, 297 F.3d
12 930, 934 (9th Cir. 2002).

13 An individual defendant is not liable on a civil rights claim unless the facts establish the
14 defendant’s personal involvement in the constitutional deprivation or a causal connection between
15 the defendant’s wrongful conduct and the alleged constitutional deprivation. See *Hansen v.*
16 *Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th Cir. 1978).
17 Plaintiff may not sue any official on the theory that the official is liable for the unconstitutional
18 conduct of his or her subordinates. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Plaintiff must
19 identify the particular person or persons who violated his rights. He must also plead facts
20 showing how that particular person was involved in the alleged violation.

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

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

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

16 **IV. Summary of Order**

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff’s request to proceed in forma pauperis (ECF No. 6) is granted.
- 19 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected
20 in accordance with the notice to the California Department of Corrections and
21 Rehabilitation filed concurrently herewith.
- 22 3. The complaint is dismissed with leave to amend within 30 days. The complaint
23 must bear the docket number assigned to this case and be titled “Amended
24 Complaint.” Failure to comply with this order will result in dismissal of this

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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.

Dated: November 16, 2017.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE