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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

ROBERT WILLIAM TUNSTALL, JR.,

No. 2:16-cv-2604-KJM-CMK-P

Plaintiff,

vs.

ORDER

JOSEPH BICK, et. al.,

Defendants.

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Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s amended complaint (Doc. 26). Plaintiff’s original complaint was dismissed as insufficient to state a claim, but he was granted leave file an amended complaint.

As plaintiff was previously informed, the court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28

1 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that  
2 complaints contain a “short and plain statement of the claim showing that the pleader is entitled  
3 to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and  
4 directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P.  
5 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the  
6 plaintiff’s claim and the grounds upon which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129  
7 (9th Cir. 1996). Because plaintiff must allege with at least some degree of particularity overt acts  
8 by specific defendants which support the claims, vague and conclusory allegations fail to satisfy  
9 this standard. Additionally, it is impossible for the court to conduct the screening required by  
10 law when the allegations are vague and conclusory.

#### 11 **I. PLAINTIFF’S ALLEGATIONS**

12 In his amended complaint, plaintiff attempts to state his claim in more detail. He  
13 did not, however, heed the court’s advisements as to what is necessary to state a claim. In his  
14 amended complaint, he continues to allege that he has been denied medical treatment that he was  
15 granted through the 602 inmate appeal process. He also alleges his due process rights were  
16 violated during a Rules Violation Report (RVR) hearing, and that some of his 602 inmate  
17 grievances have not been responded to. However, he continues to name only those individuals  
18 involved in reviewing his inmate grievances, and he continues to include unrelated claims in his  
19 amended complaint.

20 Specifically, he alleges that defendants Andresen, Adams, Elam, Bick and  
21 Brodenhamer each granted one of plaintiff’s 602 inmate appeals, but have failed to provide the  
22 treatment allowed in the grievance. He also alleges defendants Lewis, Milsap and Briggs did not  
23 adequately or timely respond to his grievances. Finally, he alleges defendants Artis, Zamora,  
24 Hayes, George and Gomez denied his due process rights relating to his RVR hearing.

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1 **II. DISCUSSION**

2 Plaintiff's amended complaint suffers from several defects that were pro-actively  
3 addressed in the court's prior screening order. This includes his attempt to include unrelated  
4 claims, his attempt to state a claim for alleged acts he cannot state a claim for, and naming the  
5 incorrect defendants for potential violations.

6 A. Unrelated Claims

7 As plaintiff was previously informed, unrelated claims against unrelated  
8 defendants do not belong in the same complaint. The Federal Rules of Civil Procedure allow a  
9 party to assert "as many claims as it has against an opposing party," but does not provide for  
10 unrelated claims against several different defendants to be raised on the same action. Fed. R.  
11 Civ. Proc. 18(a). "Thus multiple claims against a single party are fine, but Claim A against  
12 Defendant 1 should not be joined with unrelated Claim B against Defendant 2. Unrelated claims  
13 against different defendants belong in different suits." George v. Smith, 507 F.3d 605, 607 (7th  
14 Cir. 2007). Therefore, to the extent plaintiff continues to allege violations relating to his medical  
15 care and his due process rights, those cannot be contained in the same action. Plaintiff must  
16 chose which claim to continue with in this action. If plaintiff files a second amended complaint  
17 and continues to raise unrelated claims, the court will dismiss the unrelated claims. Plaintiff  
18 must separate unrelated claims into separate actions.

19 B. Inmate Grievances

20 Plaintiff also attempts to state claims which are not recognized rights.  
21 Specifically, plaintiff's allegations regarding the handling of his inmate grievances do not violate  
22 his due process rights. As plaintiff was informed, prisoners have no stand-alone due process  
23 rights related to the administrative grievance process. See Mann v. Adams, 855 F.2d 639, 640  
24 (9th Cir. 1988); see also Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (holding that there  
25 is no liberty interest entitling inmates to a specific grievance process). Because there is no right  
26 to any particular grievance process, it is impossible for due process to have been violated by

1 ignoring or failing to properly process grievances. Numerous district courts in this circuit have  
2 reached the same conclusion. See Smith v. Calderon, 1999 WL 1051947 (N.D. Cal 1999)  
3 (finding that failure to properly process grievances did not violate any constitutional right); Cage  
4 v. Cambra, 1996 WL 506863 (N.D. Cal. 1996) (concluding that prison officials' failure to  
5 properly process and address grievances does not support constitutional claim); James v. U.S.  
6 Marshal's Service, 1995 WL 29580 (N.D. Cal. 1995) (dismissing complaint without leave to  
7 amend because failure to process a grievance did not implicate a protected liberty interest);  
8 Murray v. Marshall, 1994 WL 245967 (N.D. Cal. 1994) (concluding that prisoner's claim that  
9 grievance process failed to function properly failed to state a claim under § 1983). Thus,  
10 plaintiff's amended complaint fails to state a claim regarding the handling of his inmate  
11 grievance, and therefore fails to state a claim against Lewis, Milsap and Briggs . This claim is  
12 not subject to amendment, as no additional facts can be alleged in which to state a due process  
13 claim relating to the handling of his inmate grievances.

#### 14 C. Medical Treatment

15 To the extent plaintiff is attempting to state a claim for violation of his Eighth  
16 Amendment rights regarding the failure to provide medical treatment, his amended complaint  
17 fails to cure the defects noted in the court's prior order. Again, plaintiff was previously informed  
18 that the treatment a prisoner receives in prison and the conditions under which the prisoner is  
19 confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel and unusual  
20 punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan, 511 U.S.  
21 825, 832 (1994). The Eighth Amendment "embodies broad and idealistic concepts of dignity,  
22 civilized standards, humanity, and decency." Estelle v. Gamble, 429 U.S. 97, 102 (1976).  
23 Conditions of confinement may, however, be harsh and restrictive. See Rhodes v. Chapman, 452  
24 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with "food, clothing,  
25 shelter, sanitation, medical care, and personal safety." Toussaint v. McCarthy, 801 F.2d 1080,  
26 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only when two

1 requirements are met: (1) objectively, the official's act or omission must be so serious such that it  
2 results in the denial of the minimal civilized measure of life's necessities; and (2) subjectively,  
3 the prison official must have acted unnecessarily and wantonly for the purpose of inflicting harm.  
4 See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison official must  
5 have a "sufficiently culpable mind." See id.

6           Here, plaintiff alleges several defendants, Andresen, Elam, Adams, Bick and  
7 Bodenhamer, have granted relief in 602 inmate grievances, which have requested medical  
8 treatment including neurological therapy and dementia treatment. However, he claims he has not  
9 received the treatment he has been granted. To the extent plaintiff's claim indicates the inmate  
10 grievance process, as discussed above, he cannot state a claim. To the extent he is attempting to  
11 state an Eighth Amendment claim for denial of treatment, his claim remains unclear. Plaintiff  
12 indicates that he had brain surgery and after the surgery, he became verbally aggressive.  
13 Apparently, he has received RVRs due to his aggressive behavior. However, he does not plead  
14 specific facts as to what his condition is, what treatment was denied, and who denied him the  
15 necessary treatment. Again, the Eighth Amendment is only implicated where the plaintiff has a  
16 serious medical condition that requires treatment, and the defendant has acted with deliberate  
17 indifference. Without facts alleging what his condition is and what treatment was required, the  
18 court cannot properly evaluate this claim.

19           Similarly, plaintiff has named several individuals involved in the 602 inmate  
20 grievance process as defendants to this claim. However, the facts alleged all indicate that the  
21 named defendants granted plaintiff the treatment requested. While he indicates he did not  
22 receive the treatment, he fails to allege who is responsible for providing that treatment and who  
23 denied him. While it appears that a few of the named defendants are in the medical or related  
24 department, it is not clear from the amended complaint that the individuals named were actually  
25 the ones who denied plaintiff the treatment he claims was necessary. Rather, they each  
26 apparently found treatment should be ordered. However, it is possible that an individual

1 reviewing a 602 inmate grievance may not have any authority to order treatment. Therefore,  
2 based on the facts alleged in the amended complaint, it is unclear whether any of the named  
3 individuals were the ones who actually denied plaintiff treatment. The burden is on the plaintiff  
4 to name the proper defendants in his complaint, and only an individual who “does an affirmative  
5 act, participates in another’s affirmative acts, or omits to perform an act which he is legally  
6 required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy, 588  
7 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations concerning the involvement of  
8 official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673  
9 F.2d 266, 268 (9th Cir. 1982). The allegations in the amended complaint are too vague and  
10 conclusory for the court to find any of the defendants acted with deliberate indifference to deny  
11 plaintiff necessary treatment for a serious medical condition. The defects in this claim, however,  
12 are subject to cure and plaintiff will be provided one more opportunity to allege facts sufficient to  
13 state a claim. However, as discussed, plaintiff will need to decide whether to proceed in this  
14 action on this claim.

#### 15 D. Due Process

16 Finally, plaintiff alleges his due process rights relating to his RVR hearings have  
17 been violated. Specifically, he alleges defendants Artis and Zamora denied his request for  
18 dismissal of an RVR plaintiff received. He also alleges defendants Hayes, George and Gomez  
19 denied his due process rights during the RVR hearing.

20 Plaintiff was fully informed in the prior court order what it takes to state a claim  
21 for denial of Due Process. Specifically as to disciplinary proceedings, due process requires  
22 prison officials to provide the inmate with: (1) a written statement at least 24 hours before the  
23 disciplinary hearing that includes the charges, a description of the evidence against the inmate,  
24 and an explanation for the disciplinary action taken; (2) an opportunity to present documentary  
25 evidence and call witnesses, unless calling witnesses would interfere with institutional security;  
26 and (3) legal assistance where the charges are complex or the inmate is illiterate. See Wolff v.

1 McDonnell, 418 U.S. 539, 563-70 (1974). Due process is satisfied where these minimum  
2 requirements have been met, and where there is “some evidence” in the record as a whole which  
3 supports the decision of the hearing officer. See Walker v. Sumner, 14 F.3d 1415, 1420 (9th Cir.  
4 1994); Superintendent v. Hill, 472 U.S. 445, 455 (1985). The “some evidence” standard is not  
5 particularly stringent and is satisfied where “there is any evidence in the record that could support  
6 the conclusion reached.” Hill, 472 U.S. at 455-56. However, a due process claim challenging  
7 the loss of good-time credits as a result of an adverse prison disciplinary finding is not  
8 cognizable under § 1983 and must be raised by way of habeas corpus. See Blueford v. Prunty,  
9 108 F.3d 251, 255 (9th Cir. 1997).

10 Plaintiff contends his due process rights have been violated, but his conclusory  
11 allegations do not set forth how the due process prisoners are entitled to in relation to prison  
12 disciplinary proceedings has been violated. Plaintiff states he is filing suit against defendants  
13 Artis and Zamora for “denying to dismiss” an RVR. The allegations against defendants Hayes,  
14 George and Gomez are just as vague and conclusory; plaintiff alleges he was denied his Miranda  
15 rights, right to an attorney, and was not provided a copy of the notice sent to the District  
16 Attorney’s office. He does not, however, explain how the Due Process rights to notice and an  
17 opportunity to present evidence were violated. As stated above, vague and conclusory  
18 allegations are insufficient to state a claim. However, these defects are potentially curable, and  
19 plaintiff will also be provided one more opportunity to file an amended complaint regarding this  
20 claim. However, as explained above, plaintiff will need to decide whether to proceed in this  
21 action on his Due Process violation claim or his denial of medical treatment claim. As these are  
22 unrelated claims, they cannot be brought in the same action.

### 23 III. CONCLUSION

24 Plaintiff’s amended complaint contains unrelated claims which must be brought,  
25 if at all, in separate actions. Plaintiff must choose which claim to proceed on in this action. In  
26 addition, the claims alleged in the amended complaint remain vague and conclusory, and are

1 insufficient to state a claim. Because it appears possible that some of the deficiencies identified  
2 in this order may be cured by amending the complaint, plaintiff is entitled to leave to amend prior  
3 to dismissal of the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000)  
4 (en banc). Plaintiff is informed that, as a general rule, an amended complaint supersedes the  
5 original complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus,  
6 following dismissal with leave to amend, all claims alleged in the original complaint which are  
7 not alleged in the amended complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th  
8 Cir. 1987). Therefore, if plaintiff amends the complaint, the court cannot refer to the prior  
9 pleading in order to make plaintiff's amended complaint complete. See Local Rule 220. An  
10 amended complaint must be complete in itself without reference to any prior pleading. See id.

11           Plaintiff is referred to the court's prior order for additional guidance on what is  
12 required to state a claim. However, he is reminded that to state a claim under 42 U.S.C. § 1983,  
13 the plaintiff must allege an actual connection or link between the actions of the named defendants  
14 and the alleged deprivations. See Monell v. Dep't of Social Servs., 436 U.S. 658 (1978); Rizzo  
15 v. Goode, 423 U.S. 362 (1976). "A person 'subjects' another to the deprivation of a  
16 constitutional right, within the meaning of § 1983, if he does an affirmative act, participates in  
17 another's affirmative acts, or omits to perform an act which he is legally required to do that  
18 causes the deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th  
19 Cir. 1978). Vague and conclusory allegations concerning the involvement of official personnel  
20 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th  
21 Cir. 1982). Rather, the plaintiff must set forth specific facts as to each individual defendant's  
22 causal role in the alleged constitutional deprivation. See Leer v. Murphy, 844 F.2d 628, 634 (9th  
23 Cir. 1988).

24           If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
25 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See  
26 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how



1 each named defendant is involved, and must set forth some affirmative link or connection  
2 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d  
3 164, 167 (9th Cir. 1980); Johnson, 588 F.2d at 743.

4 Finally, plaintiff is warned that failure to file an amended complaint within the  
5 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at  
6 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply  
7 with Rule 8 may, in the court's discretion, be dismissed with prejudice pursuant to Rule 41(b).  
8 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Plaintiff's amended complaint is dismissed with leave to amend; and
- 11 2. Plaintiff shall file an amended complaint within 30 days of the date of  
12 service of this order.

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14 DATED: January 16, 2018

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16 **CRAIG M. KELLISON**  
17 UNITED STATES MAGISTRATE JUDGE  
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