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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DUANE PEYTON LINDER,
Plaintiff,
v.
CARMALINO GALANG, M.D., et al.,
Defendants.

No. 2:17-cv-0941 JAM AC P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this case, in which he seeks to challenge the alleged failure of his knee replacement surgery and inability to obtain restorative post-surgical medical care. By order filed November 28, 2017, the undersigned informed plaintiff of the deficiencies in his original complaint, and dismissed the complaint with leave to file a First Amended Complaint (FAC) within thirty days. See ECF No. 10. Plaintiff did not file a FAC. Therefore, on January 10, 2018, the court issued Findings and Recommendations in which the undersigned recommended that this action be dismissed without prejudice. See ECF No. 13. Plaintiff timely filed objections in which he states that he is disabled and has been unable to obtain assistance with this case. See ECF No. 14.

The court construes plaintiff’s objections as a late request for extended time to file a FAC, and grants the request. Plaintiff will be given 30 days to file a First Amended Complaint. The pending findings and recommendations will accordingly be withdrawn.

1 The original screening order, ECF No. 10, informed plaintiff of the requirements for
2 stating a claim for deliberate indifference to serious medical needs under the Eighth Amendment.
3 In summary, the original complaint is deficient in two significant ways: (1) it does not identify
4 the challenged conduct of each defendant (it contains “no charging allegations”); and (2) the facts
5 plaintiff provided, if true, might establish medical malpractice but do not establish an Eighth
6 Amendment violation. A medical malpractice case may be filed in state court. In order to
7 proceed in federal court under 42 U.S.C. § 1983, the federal civil rights statute, plaintiff’s claim
8 must involve his constitutional rights.

9 In drafting his First Amended Complaint, plaintiff should review the Order dated
10 November 28, 2017 (attached). He should do his best to follow the court’s instructions.
11 Amending the complaint does not require legal research or knowledge. To amend, plaintiff needs
12 to provide **more information** about what happened to him, so that the court can determine
13 whether the facts state a claim.

14 It is particularly important for the First Amended Complaint to identify who was (or is)
15 responsible for the medical care or medical decisions he is challenging. The First Amended
16 Complaint must also clearly identify the challenged conduct of each defendant – it is helpful to
17 consider “who did what, when, and where” – and specifically describe how this challenged
18 conduct caused or otherwise relates to plaintiff’s knee problems. Also, in order to state an Eighth
19 Amendment claim, plaintiff must allege specific facts, showing that each defendant **knew of but**
20 **disregarded an excessive risk** to plaintiff’s health.

21 It may be helpful for plaintiff to consider two time frames: (1) his surgery and any
22 complications arising directly from the surgery, and (2) his medical care afterwards. This
23 framework may assist plaintiff in the identification of appropriate defendants and their respective
24 challenged conduct.

25 Plaintiff is also reminded that he will only be allowed to proceed against San Joaquin
26 General Hospital as a defendant if he can allege facts showing that a specific policy, practice or
27 custom of the hospital was the “moving force” that resulted in the violation of plaintiff’s
28 constitutional rights. The hospital cannot be liable under § 1983 for the actions of its doctors or

1 other employees unless a particular hospital policy caused those actions.

2 Accordingly, IT IS HEREBY ORDERED that:

3 1. The findings and recommendations issued January 10, 2018 (ECF No. 13) are
4 withdrawn.

5 2. Plaintiff's objections to the findings and recommendations (ECF No. 14) are construed
6 as a request for extended to time to file a First Amended Complaint, which is granted.


7 3. Plaintiff is directed to file a First Amended Complaint within thirty (30) days after
8 service of this order.

9 4. Failure to timely file a First Amended Complaint will result in a recommendation that
10 this action be dismissed without prejudice.

11 5. The Clerk of Court is directed to send plaintiff, together with a copy of this order, the
12 following: (i) a copy of plaintiff's original complaint (ECF No. 1); (ii) a copy of this court's
13 order filed November 28, 2017 (ECF No. 10); and (iii) a blank complaint form used by prisoners
14 in this district to pursue a civil rights action.

15 IT IS SO ORDERED.

16 DATED: January 30, 2018

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18 ALLISON CLAIRE
19 UNITED STATES MAGISTRATE JUDGE
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