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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD ANTHONY EVANS,

No. 2:17-cv-1888 AC P

Plaintiff,

v.

ORDER

CALIFORNIA DEPT. OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se with this civil rights action seeking relief pursuant to 42 U.S.C. § 1983.

On October 30, 2017, plaintiff filed a second amended complaint. ECF No. 14. On January 29, 2018, plaintiff filed a motion to consolidate this case with two other cases that he had opened in this court. See ECF No. 16. Thereafter, on April 30, 2018, plaintiff also filed a motion to amend the complaint to include those two cases. ECF No. 17. For the reasons stated herein, the court will deny the two motions. However, in light of the content of these filings as well as the information in the second amended complaint, the court will grant plaintiff a final opportunity to amend his complaint.

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1 I. MOTION TO CONSOLIDATE

2 The cases plaintiff wishes to consolidate with this matter are: Evans v. California Dep't
3 of Corr. and Rehab., No. 17-cv-1890 WBS DB P (E.D. Cal. filed September 11, 2017) ("Evans
4 II"), and Evans v. California Dep't of Corr. and Rehab., No. 17-cv-1891 JAM KJN P (E.D. Cal.
5 filed September 11, 2017) ("Evans III"). A review of the dockets of each of these cases indicates
6 that on January 18, 2018, the court dismissed Evans III without prejudice because plaintiff had
7 failed to amend the complaint. See Evans III, ECF Nos. 12, 13, 14. Thereafter, on April 26,
8 2018, Evans II was dismissed for failure to prosecute. See Evans II, ECF Nos. 13, 14, 15.
9 Specifically, plaintiff had again failed to amend the complaint as he had been ordered. See Evans
10 II, ECF No. 13 at 1.

11 District courts have "broad discretion under this rule to consolidate cases pending in the
12 same district." Inv'rs Research Co. v. United States Dist. Court for Cent. Dist., 877 F.2d 777 (9th
13 Cir. 1989). However, because these cases have been dismissed and closed, they are not pending.
14 Therefore, they cannot be consolidated. See Fed. R. Civ. Proc. 42(a) (identifying actions to be
15 consolidated as ones actually before the court); see, e.g., Moon v. Lizarraga, No. 2:15-cv-0027
16 MCE CMK P, 2015 WL 5693093, at *5 (E.D. Cal. Sept. 28, 2015) (denying motion to
17 consolidate closed cases). For this reason, plaintiff's motion to consolidate this case with Evans
18 II and Evans III (ECF No. 16) will be denied as moot.

19 II. MOTION TO AMEND

20 As for plaintiff's request to amend (ECF No. 17), plaintiff wishes to amend the instant
21 complaint in order to include the claims he raised in Evans II and Evans III. See ECF No. 17.
22 For the reasons stated below, this motion must be denied as well.

23 A. Failure to Comply With Local Rule 220

24 First, the motion to amend does not include a copy of the proposed amended complaint
25 which is required under Local Rule 220. See ECF No. 17. Local Rule 220 clearly states:

26 [E]very pleading to which an amendment . . . is permitted . . . or has been allowed
27 by court order . . . shall be retyped and filed so that it is complete in itself without
28 reference to the prior or superseded pleading. No pleading shall be deemed
amended or supplemented until this Rule has been complied with.

1 E.D. Cal., Civ. L.R. 220 (2009). In plaintiff’s two-sentence motion to amend, he simply requests
2 permission to add the Evans II and Evans III claims to the instant action because in Evans II and
3 Evans III, he was denied the opportunity to “merge” all three cases. See ECF No. 17. The
4 motion does not contain all relevant facts and claims, and therefore, it is not complete in and unto
5 itself. Thus, on its face, the motion to amend as filed is deficient.

6 B. Improper Defendants in Evans II and Evans III

7 Next, under the Eleventh Amendment, agencies of the state are immune from damage
8 actions brought in federal court. See Mitchell v. Los Angeles Cmty. Coll. Dist., 861 F.2d 198,
9 201 (9th Cir. 1988) (citation omitted); see also Evans II, ECF No. 9 at 6 (stating same); see also
10 Evans III, ECF No. 9 at 3 (stating same); see also 28 U.S.C. § 1915(e)(2)(B)(iii) (permitting
11 dismissal of action which seeks monetary relief against defendant who is immune from such
12 relief). Consequently, for the following reasons, the claims in Evans II and Evans III, as currently
13 stated, are not viable.

14 The Evans II complaint listed no defendant other than the California Department of
15 Corrections and Rehabilitation (“CDCR”), and it requested a sum of \$250,000.00 in damages for
16 pain and suffering experienced when plaintiff was not given pain medication for three weeks.
17 See Evans II, ECF No. 1. The Evans III complaint had the same flaws. See Evans III, ECF No. 1
18 (identifying CDCR as sole defendant and requesting \$200,000.00 in damages for pain and
19 suffering for failing to provide mental health consultant over three week period). Because the
20 claims for damages in Evans II and Evans III were not brought against appropriate defendants,
21 the claims continue not to be cognizable. See generally 28 U.S.C. § 1915(e)(2)(B)(iii). For this
22 reason as well, amending the complaint to include the claims in Evans II and Evans III as they are
23 currently alleged would be improper.

24 C. Failure to Comply With Local Rule 123

25 Local Rule 123 defines related actions, in relevant part, as ones where: (1) both actions
26 involve the same parties and are based on the same or a similar claim; (2) both actions involve the
27 same property, transaction or event, and/or (3) both actions involve similar questions of fact and
28 the same question of law. See E.D. Cal., L.R. 123(a)(1)-(3) (2009).

1 In the motion to amend, plaintiff does not clarify precisely how the claims and parties in
2 this matter and in Evans II and Evans III stem from a common question of law or fact. See
3 generally ECF No. 17. He fails to clearly show that the claims and defendants identified in these
4 three cases are closely related enough to warrant being addressed in the same complaint. See
5 generally id.

6 The instant complaint alleges that defendant Harrison, a sergeant at Deuel Vocational
7 Institution in Tracy, CA (“DVI Tracy”), “set [plaintiff] up” to be attacked by his cellmate when
8 he denied plaintiff’s request to be placed in administrative segregation because of his sex offender
9 status. See ECF No. 14 at 1 (brackets added). It also alleges that defendant Harrison violated
10 plaintiff’s rights when he failed to refer plaintiff for a mental health evaluation when he arrived at
11 DVI Tracy because this failure to refer him also ultimately led to him being attacked. See id. at
12 1-2.

13 In Evans II, plaintiff alleges that CDCR delayed plaintiff’s access to pain medication for
14 three weeks, and in Evans III, plaintiff alleges that CDCR delayed plaintiff’s access to mental
15 health care for three weeks (see Evans III, ECF No. 1 at 3). Because there is no indication in the
16 amended complaint how, if at all, any of these events and/or parties are related, the complaint
17 may not be amended to include the claims in Evans II and Evans III as they are currently alleged.
18 In order to be added to the instant complaint, more information linking any and all appropriate
19 defendants and events together needs to be provided in these claims.

20 III. PLEADING STANDARD

21 A. Generally

22 Section 1983 “provides a cause of action for the deprivation of any rights, privileges, or
23 immunities secured by the Constitution and laws of the United States.” Wilder v. Virginia Hosp.
24 Ass’n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not itself a source
25 of substantive rights, but merely provides a method for vindicating federal rights conferred
26 elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

27 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a
28 right secured by the Constitution or laws of the United States was violated and (2) that the alleged

1 violation was committed by a person acting under the color of state law. See West v. Atkins, 487
2 U.S. 42, 48 (1988); Ketchum v. Alameda Cty., 811 F.2d 1243, 1245 (9th Cir. 1987).

3 A complaint must contain “a short and plain statement of the claim showing that the
4 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
5 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
6 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
7 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual
8 matter, accepted as true, to state a claim to relief that is plausible on its face.” Id. Facial
9 plausibility demands more than the mere possibility that a defendant committed misconduct and,
10 while factual allegations are accepted as true, legal conclusions are not. Id. at 677-78.

11 B. Linkage Requirement

12 Under Section 1983, a plaintiff bringing an individual capacity claim must demonstrate
13 that each defendant personally participated in the deprivation of his rights. See Jones v.
14 Williams, 297 F.3d 930, 934 (9th Cir. 2002). There must be an actual connection or link between
15 the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
16 Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 691, 695 (1978).

17 Government officials may not be held liable for the actions of their subordinates under a
18 theory of respondeat superior. Monell, 436 U.S. at 691. Since a government official cannot be
19 held liable under a theory of vicarious liability in § 1983 actions, plaintiff must plead sufficient
20 facts showing that the official has violated the Constitution through his own individual actions by
21 linking each named defendant with some affirmative act or omission that demonstrates a violation
22 of plaintiff's federal rights. Iqbal, 556 U.S. at 676.

23 Liability may be imposed on supervisory defendants under § 1983 only if the supervisor:
24 (1) personally participated in the deprivation of constitutional rights or directed the violations or
25 (2) knew of the violations and failed to act to prevent them. Hansen v. Black, 885 F.2d 642, 646
26 (9th Cir. 1989); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Defendants cannot be held
27 liable for being generally deficient in their supervisory duties.

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1 IV. APPLICABLE LAW: DELIBERATE INDIFFERENCE STANDARD

2 A. Deliberate Indifference to Serious Medical Need

3 “The Constitution does not mandate comfortable prisons, but neither does it permit
4 inhumane ones.” Farmer v. Brennan, 511 U.S. 825, 832 (1994) (internal quotation marks and
5 citations omitted). “[A] prison official violates the Eighth Amendment only when two
6 requirements are met. First, the deprivation alleged must be, objectively, sufficiently serious; a
7 prison official’s act or omission must result in the denial of the minimal civilized measure of
8 life’s necessities.” Id. at 834 (internal quotation marks and citations omitted). Second, the prison
9 official must subjectively have a sufficiently culpable state of mind, “one of deliberate
10 indifference to inmate health or safety.” Id. (internal quotation marks and citations omitted).
11 This second prong “is satisfied by showing (a) a purposeful act or failure to respond to a
12 prisoner’s pain or possible medical need and (b) harm caused by the indifference.” Jett v. Penner,
13 439 F.3d 1091, 1096 (9th Cir. 2006) (internal citations, punctuation and quotation marks
14 omitted); accord, Lemire v. California Dep’t of Corr. and Rehab., 726 F.3d 1062, 1081 (9th Cir.
15 2013); Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012).

16 Whether a defendant had requisite knowledge of a substantial risk of harm is a question of
17 fact. Farmer, 511 U.S. at 842. Thus, liability may be avoided by presenting evidence that the
18 defendant lacked knowledge of the risk and/or that his response was reasonable in light of all the
19 circumstances. See Farmer, 511 U.S. at 844-45; see also Simmons v. Navajo County Ariz., 609
20 F.3d 1011, 1017-18 (9th Cir. 2010) (requiring official be subjectively aware of serious medical
21 need and fail to adequately respond to need to establish deliberate indifference).

22 The official is not liable under the Eighth Amendment unless he “knows of and disregards
23 an excessive risk to inmate health or safety; the official must both be aware of facts from which
24 the inference could be drawn that a substantial risk of serious harm exists, and he must also draw
25 the inference.” Farmer, 511 U.S. at 837. Then he must fail to take reasonable measures to abate
26 the substantial risk of serious harm. Id. at 847. Mere negligent failure to protect an inmate from
27 harm is not actionable under § 1983. See id. at 835.

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1 B. Deliberate Indifference to Threat of Serious Physical Harm

2 The right to personal security is an “historic liberty interest” that is protected substantively
3 by the Due Process Clause. Youngberg v. Romeo, 457 U.S. 307, 315 (1982). This right is not
4 extinguished by lawful confinement, even for penal purposes. See generally Hutto v. Finney, 437
5 U.S. 678 (1978). Insufficient protection of a prisoner resulting in harm inflicted by other inmates
6 may also violate a prisoner’s due process rights. Hernandez v. Denton, 861 F.2d 1421, 1424 (9th
7 Cir. 1988) (citing Youngberg, 457 U.S. at 315-16).

8 “The Eighth Amendment imposes a duty on prison officials to protect inmates from
9 violence at the hands of other inmates.” Cortez v. Skol, 776 F.3d 1046, 1050 (9th Cir. 2015). A
10 prisoner may state a § 1983 claim under the Eighth Amendment against prison officials where the
11 officials acted with deliberate indifference to the threat of serious harm or injury to him. Labatad
12 v. Corrections Corp. of America, 714 F.3d 1155, 1160 (9th Cir. 2013); see Berg v. Kincheloe,
13 794 F.2d 457, 459 (9th Cir. 1986) (stating same with respect to harm inflicted by another inmate).
14 Liability may follow only if a prison official knows that inmates face a substantial risk of serious
15 harm and the official disregards that risk by failing to take reasonable measures to abate it.
16 Labatad, 714 F.3d at 1160.

17 V. ANALYSIS

18 A. Plaintiff’s Deliberate Indifference to Serious Physical Harm Claims

19 Plaintiff’s second amended complaint asserts that upon his arrival at DVI Tracy,
20 defendant Harrison demonstrated deliberate indifference to serious physical harm to plaintiff
21 when he: (1) ignored plaintiff’s request to be placed in administrative segregation due to his sex
22 offender status, and (2) failed to send plaintiff for a mental health evaluation prior to placement.
23 See generally ECF No. 14. While the former states a cognizable claim against defendant
24 Harrison for deliberate indifference to serious physical harm stemming from a failure to protect,
25 the latter does not.

26 1. Plaintiff’s Administrative Segregation Request

27 Plaintiff alleges that defendant Harrison denied plaintiff’s specific request to be placed in
28 administrative segregation and that as a result, he was brutally beaten. See ECF No. 14 at 2.

1 According to plaintiff, he had been mistreated in Solano County Jail because of his sex offender
2 charges. See id. at 1. For example, while in administrative segregation at the jail, plaintiff had
3 his food port left open, had his cell door randomly pop open with no officers near his cell, and
4 had “inmate contact” several times. See id. These incidents led to his placement in “mental
5 health observation” for three days and to his being prescribed medication for these ailments. See
6 id. These safety issues also caused plaintiff to have extreme paranoia and anxiety from which he
7 still suffers. See id.

8 Plaintiff alleges that because of the incidents that occurred at Solano County Jail because
9 of his status, plaintiff expressed specific concerns for his safety to defendant Harrison upon
10 arriving at DVI Tracy, and requested to be placed in administrative segregation. See ECF No. 14
11 at 1. According to plaintiff, defendant Harrison’s response was, “This is prison,” as if plaintiff’s
12 concerns were not important. See id. Plaintiff states, “[Defendant Harrison] knew my charges
13 and seemed not to care for my safety when I expressed concerns to him.” ECF No. 14 at 1
14 (brackets added). He asserts that because he was not placed in administrative segregation, he was
15 beaten, presumably because of his sex offender status. See generally ECF No. 14. In sum,
16 plaintiff argues, he was “put in a dangerous situation on purpose.” See ECF No. 14 at 1.

17 In light of: (1) these statements; (2) defendant Harrison’s awareness of plaintiff’s sex
18 offender status; (3) the substantial risk of harm such status had the potential to yield as told to
19 defendant Harrison by plaintiff, and (4) defendant Harrison’s subsequent disregard of said risk by
20 failing to place plaintiff in administrative segregation, plaintiff has presented a cognizable claim
21 that defendant Harrison demonstrated deliberate indifference to serious physical harm to plaintiff
22 when he failed to protect him by placing him in administrative segregation. See generally
23 Johnson v. Robinson, No. 2:12-cv-2400 WBS DAD P, 2015 WL 882021, at *14 (E.D. Cal. Mar.
24 2, 2015) (stating objective and subjective elements of Eighth Amendment claim were satisfied by
25 suggestion that sex offender label put plaintiff in physical danger and by plaintiff’s adequate
26 pleading of defendant’s retaliatory-based deliberate indifference).

27 2. Plaintiff’s Mental Health Concerns

28 Plaintiff further asserts that because he feared for his safety in prison due to the

1 mistreatment he had experienced at the Solano County Jail (see generally ECF No. 14 at 1
2 (stating since his jail incarceration, plaintiff has had “documented safety issues”)), upon arrival at
3 DVI Tracy he told defendant Harrison about his paranoia, anxiety and depression. See ECF No.
4 14 at 2. He alleges that he told defendant Harrison about the incidents that had happened to him
5 while in jail as well as about the resultant concern for his safety while there. See id. However,
6 despite being given this information, defendant Harrison did not mention the possibility of
7 plaintiff receiving a psychological evaluation before he was placed in receiving, even though
8 others with whom plaintiff had arrived had received one. See ECF No. 14 at 1-2. Instead,
9 defendant Harrison “somehow bypassed [plaintiff’s] psych exam in [receiving and release] and
10 sent [him] strait[e] [sic] to [his] housing unit where the attack happened.” ECF No. 14 at 2
11 (brackets added).

12 Plaintiff contends that had defendant Harrison sent him for a psychological evaluation
13 when he arrived, it would have been determined that he should be placed in administrative
14 segregation until an “ICC meeting” ultimately determined the appropriate setting for him. See
15 ECF No. 14 at 1. He further asserts that had he received the evaluation prior to placement, the
16 medications alone that he was taking upon his arrival at DVI Tracy would have raised safety
17 concerns. See generally id. at 2. Nevertheless, instead of being directed to medical when he
18 arrived, plaintiff was “pushed along like the rest of the new inmates.” See ECF No. 14 at 2. As a
19 result, plaintiff was not placed in administrative segregation, which ultimately led to plaintiff
20 being beaten. See ECF No. 14 at 1-2.

21 These statements fail to state a cognizable claim. In order to prevail and recover damages
22 against a defendant, a plaintiff must show: (1) that the defendant, either by acting or by failing to
23 act, was deliberately indifferent to the mandates of the Eighth Amendment, and (2) that the
24 indifference was the actual and proximate cause of the deprivation of the individual’s Eighth
25 Amendment right to be free from cruel and unusual punishment. Leer v. Murphy, 844 F.2d 628,
26 634 (9th Cir. 1988); see Williams v. Bennett, 689 F.2d 1379, 1380-81 (9th Cir. 1982) (stating
27 proof of affirmative causal connection between act under color of state law and constitutional
28 deprivation is required).

1 Although plaintiff states that in the past, he had been placed in “mental health
2 observation,” that currently, he hears voices and sounds and sees pictures, and that upon his
3 arrival at DVI Tracy, he made defendant Harrison aware of his mental health problems (see ECF
4 No. 14 at 1-2), there is no nexus between defendant Harrison’s failure to send plaintiff for a
5 mental health evaluation and plaintiff being beaten. While it is possible that a mental health
6 referral by defendant Harrison may have ultimately led to plaintiff being placed in administrative
7 segregation, that would not have been a necessary result. Plaintiff points to no prison policy
8 which, in light of plaintiff’s mental health ailments, would have mandated a mental health review
9 as well as subsequent placement in administrative segregation. Moreover, because plaintiff is
10 alleging that the beating occurred because of his sex offender status and not his mental health
11 status, the failure to place plaintiff in administrative segregation based upon his mental health
12 status also fails to support a causal link. Because there is no causal connection, the claim fails
13 regardless of any allegations otherwise establishing deliberate indifference See, e.g., Leer, 844
14 F.2d at 634 (declining to consider deliberate indifference analysis due to failure to establish actual
15 and proximate cause of constitutional violation). For these reasons, this claim fails.

16 B. Plaintiff’s Evans II and Evans III Claims: Deliberate Indifference to Serious
17 Medical and Mental Health Needs

18 In plaintiff’s second amended complaint, he asserts that defendant Harrison “had
19 something to do with [him] not seeing the [psych] on 6/05/17.” ECF No. 14 at 2 (brackets
20 added). In Evans III, plaintiff also claims a violation of right because he was not immediately
21 referred to mental health after he had been beaten. See generally Evans III. It is unclear whether
22 these two claims are referring to the same event or if one claim is referring to plaintiff not being
23 sent for a psychological evaluation before he was placed in DVI Tracy while the other claim is
24 referring to plaintiff not being sent for an evaluation after he had been beaten there. If plaintiff
25 chooses to amend the complaint, he must clarify this. Specifically, if these are two different
26 claims, plaintiff must make clear who denied or failed to refer him to mental health services
27 immediately after the assault occurred as well as what harm the delay caused. The same can be
28 said for plaintiff’s argument in Evans II: In the amended complaint, plaintiff must identify who

1 denied or failed to refer plaintiff to medical immediately after he was beaten as well as what harm
2 resulted due to the delay in referral.

3 VI. LEAVE TO AMEND

4 A. Options for Amending Complaint

5 In sum, the court finds that plaintiff's contention that his constitutional rights were
6 violated when defendant Harrison failed to place him administrative segregation given his sex
7 offender status states a cognizable claim. However, plaintiff's theory that those same rights were
8 violated when defendant Harrison failed to refer him to mental health prior to placing him does
9 not. Additionally, because Evans II and Evans III have been closed, they may not be consolidated
10 with this case. See Fed. R. Civ. Proc. 42(a). Finally, plaintiff's motion to amend to include the
11 claims in Evans II and Evans III must be denied as deficient. See E.D. Cal., Civ. L.R. 220
12 (2009). However, if plaintiff believes that the claims in those cases involve the same party and
13 stem from the same transaction or event pursuant to law discussed herein, plaintiff may include
14 those claims if he opts to amend the complaint.

15 In light of the above, plaintiff is being given the following options: Plaintiff must either:
16 (1) proceed immediately on the cognizable claim against defendant Harrison and voluntarily
17 dismiss the non-viable one as determined above, or (2) try to amend the complaint to make the
18 second claim against defendant Harrison a viable one. If plaintiff wishes to proceed without
19 amending the complaint, the court will recommend the dismissal of plaintiff's claim that his
20 rights were violated because defendant Harrison failed to refer him to mental health upon his
21 arrival at DVI Tracy.

22 If plaintiff chooses to amend the complaint, he may include claims from Evans II and
23 Evans III that stem from the same transaction or event at issue in this case. Plaintiff is cautioned,
24 however, that those claims must also identify appropriate defendants and they must provide clear
25 causal links.

26 Finally, if plaintiff chooses to amend the complaint, it must include all claims and requests
27 for relief that he wishes to make, including the claim that has been found above to state a claim,
28 because the court will not look at the claims or information in the original or previously amended

1 complaints. **In other words, any claims not in the amended complaint will not be considered.**

2 In the amended complaint, if plaintiff includes the same claims and requests for relief which the
3 court has already determined are not viable, he can expect that the court will recommend that they
4 be dismissed.

5 Plaintiff must complete the attached notification indicating which option he chooses to
6 pursue and return it to the court. Once the court receives the notice, it will issue an order telling
7 plaintiff what he needs to do next (e.g., file an amended complaint or complete and return service
8 paperwork).

9 B. Format of Amended Complaint

10 If plaintiff chooses to amend the complaint, the court provides the following information
11 as a guide:

12 Any amended complaint must identify as a defendant only persons who personally
13 participated in a substantial way in depriving him of a federal constitutional right. Johnson v.
14 Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (stating person subjects another to deprivation of
15 constitutional right if he acts, participates in another's act, or omits to perform act he is legally
16 required to do that causes alleged deprivation). It must also contain a caption including the names
17 of all defendants. Fed. R. Civ. P. 10(a). Plaintiff may not change the nature of this suit by
18 alleging new, unrelated claims. See George 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., Civ. L.R. 220 (2009). This is because
21 an amended complaint supersedes any earlier filed complaint, and once an amended complaint is
22 filed, the earlier filed complaint no longer serves any function in the case. See Rhodes v.
23 Robinson, 621 F.3d 1002, 1005 (9th Cir. 2010) (stating amended complaint supersedes original,
24 the latter being treated thereafter as non-existent) (citation omitted); see also Ferdik v. Bonzelet,
25 963 F.2d 1258, 1262 (9th Cir. 1992).

26 Finally, the court notes that any amended complaint should be as concise as possible in
27 fulfilling the above requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of
28 procedural or factual background which has no bearing on his legal claims. He should also take

1 pains to ensure that his amended complaint is as legible as possible. This refers not only to
2 penmanship, but also spacing and organization. Lengthy, unbroken paragraphs can be difficult to
3 read when handwritten, and plaintiff would do well to avoid them wherever possible. See, e.g.,
4 Fed. R. Civ. Proc. 10(b) (indicating claims must be stated in numbered paragraphs).

5 VII. PLAIN LANGUAGE SUMMARY OF THIS ORDER FOR A PRO SE LITIGANT

6 You have stated one claim that is cognizable and may proceed: that Harrison violated your
7 Eighth Amendment right to physical safety by failing to place you in administrative segregation.
8 However, your allegations that Harrison violated those same rights by failing to refer you to
9 mental health prior to placement do not state claim. In addition, because the cases that you wish
10 to consolidate with the instant action – Evans II and Evans III – have been closed, and so your
11 request to consolidate these cases with the instant matter is being denied as moot. Finally,
12 because the motion to amend that you submitted was not in the proper format, it is being denied.

13 You are, however, being given a final opportunity to file an amended complaint. If you
14 choose to do so, all viable claims in this matter should be included. Therefore, if you believe that
15 the claims in Evans II and Evans III arise from the same transaction or occurrence as the claims in
16 this case, you may include them in an amended complaint. All claims must be clearly stated. In
17 other words, they must all name proper defendants, and they must all establish a sufficient causal
18 relationship between the actions taken against you and the harm caused to you.

19 If you choose not to amend the complaint, and you do not voluntarily dismiss the claim
20 alleging that your rights were violated when defendant Harrison failed to refer you to mental
21 health upon your arrival at DVI Tracy, the court will recommend that it be dismissed, and your
22 case will proceed on the sole remaining claim against defendant Harrison. Either way, you must
23 return the attached form to the court to inform it of what you wish to do.

24 Accordingly, IT IS HEREBY ORDERED that:

25 1. Plaintiff’s January 29, 2018 motion to consolidate cases 2:17-cv-1890 WBS DB P
26 (Evans II) and 2:17-cv-1891 JAM KJN P (Evans III) with the instant action (ECF No. 16) is
27 DENIED as moot;

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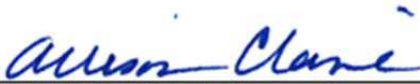
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2. Plaintiff's April 30, 2018 motion to amend the complaint (ECF No. 17) is DENIED as deficient;

3. Plaintiff is to return the attached Plaintiff's Notice on How to Proceed form within fourteen days of the service date of this order, and

4. The Clerk of Court is directed to send plaintiff a new civil rights complaint form from this district as well as a copy of the Local Rules from this district.

DATED: May 15, 2018



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD ANTHONY EVANS,

Plaintiff,

v.

CALIFORNIA DEPT. of CORRECTIONS
AND REHABILITATION, et al.,

Defendants.

No. 2:17-cv-1888 AC P

PLAINTIFF'S NOTICE ON HOW TO
PROCEED

CHECK ONE:

_____ Plaintiff would like to proceed immediately on his Eighth Amendment claim against defendant Harrison related to his failure to place plaintiff in administrative segregation upon his arrival at DVI Tracy without amending the complaint. By choosing to go forward without amending the complaint, plaintiff: (1) consents to the dismissal without prejudice of the claim against defendant Harrison that is related to his failure to refer plaintiff to mental health upon his arrival at DVI Tracy, and (2) chooses to forego including any related and/or potentially viable claims in Evans II and Evans III in this action.

_____ Plaintiff would like to amend the complaint.

DATED: _____

RICHARD ANTHONY EVANS
Plaintiff Pro Se