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

RALPH McGHEE,

Plaintiff,

v.

WILLIAM KUSHNER, III, et al.,

Defendants.

No. 2:17-CV-2059-JAM-DMC-P

ORDER

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 complaint (Doc. 1).

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 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the plaintiff’s claim and the grounds upon which it

1 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege
2 with at least some degree of particularity overt acts by specific defendants which support the
3 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
4 impossible for the court to conduct the screening required by law when the allegations are vague
5 and conclusory.

6 7 **I. PLAINTIFF'S ALLEGATIONS**

8 Plaintiff names the following as defendants: (1) William Kushner, DDS; and
9 (2) Vincent Hu, DDS. See Doc. 1, pp. 1, 2. According to plaintiff, he was “forced” to sign a
10 form indicating his refusal to attend a dental appointment. Plaintiff alleges defendant Kushner
11 responded to an informal grievance concerning the issue. See id. at 2. Plaintiff states defendant
12 Kushner informed him it was policy and procedure for the dental office to obtain an inmate’s
13 signature on a refusal form when the inmate is unable to attend a medical appointment. See id.
14 According to plaintiff, this reasoning “is fraught with error” and constitutes a denial of equal
15 protection because other inmates who were unable to attend medical appointments were not
16 required to sign a refusal form. See id. Plaintiff adds: “Defendants Kushner and Hu was [sic]
17 adamant about making Plaintiff sign a refusal slip. . . .” Id. at 4. Plaintiff alleges defendants’
18 conduct violated his rights under the Fourteenth Amendment to equal protection. Plaintiff also
19 claims defendants violated his right to be free from harassment.

20 21 **II. DISCUSSION**

22 The court finds plaintiff fails to state a claim for harassment.¹ The treatment a
23 prisoner receives in prison and the conditions under which the prisoner is confined are subject to
24 scrutiny under the Eighth Amendment, which prohibits cruel and unusual punishment. See
25 Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan, 511 U.S. 825, 832 (1994). The
26 Eighth Amendment “. . . embodies broad and idealistic concepts of dignity, civilized standards,
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28 ¹ Plaintiff’s equal protection claim appears to be cognizable.

1 humanity, and decency.” Estelle v. Gamble, 429 U.S. 97, 102 (1976). Conditions of confinement
2 may, however, be harsh and restrictive. See Rhodes v. Chapman, 452 U.S. 337, 347 (1981).
3 Nonetheless, prison officials must provide prisoners with “food, clothing, shelter, sanitation,
4 medical care, and personal safety.” Toussaint v. McCarthy, 801 F.2d 1080, 1107 (9th Cir. 1986).
5 A prison official violates the Eighth Amendment only when two requirements are met:
6 (1) objectively, the official’s act or omission must be so serious such that it results in the denial of
7 the minimal civilized measure of life’s necessities; and (2) subjectively, the prison official must
8 have acted unnecessarily and wantonly for the purpose of inflicting harm. See Farmer, 511 U.S.
9 at 834. Thus, to violate the Eighth Amendment, a prison official must have a “sufficiently
10 culpable mind.” See id. Allegations of verbal harassment do not state a claim under the Eighth
11 Amendment unless it is alleged that the harassment was “calculated to . . . cause [the prisoner]
12 psychological damage.” Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987); see also
13 Keenan v. Hall, 83 F.3d 1083, 1092 (9th Cir. 1996), amended by 135 F.3d 1318 (9th Cir. 1998).
14 In addition, the prisoner must show that the verbal comments were unusually gross, even for a
15 prison setting, and that he was in fact psychologically damaged as a result of the comments.
16 See Keenan, 83 F.3d at 1092.

17 In this case, plaintiff simply has not alleged facts which would sustain a
18 harassment claim. Specifically, plaintiff does not allege whether defendant forced him to sign the
19 refusal form in order to cause plaintiff psychological damage. Further, plaintiff does not allege
20 either defendants’ conduct was unusually gross. Finally, there are no allegations to indicate
21 defendants’ conduct was, objectively, so serious as to result in the denial of the minimal civilized
22 measure of life’s necessities. Plaintiff will be provided an opportunity to amend the complaint.

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1 **III. CONCLUSION**

2 Because it is possible that the deficiencies identified in this order may be cured by
3 amending the complaint, plaintiff is entitled to leave to amend. See Lopez v. Smith, 203 F.3d
4 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is informed that, as a general rule, an
5 amended complaint supersedes the original complaint. See Ferdik v. Bonzelet, 963 F.2d 1258,
6 1262 (9th Cir. 1992). Therefore, if plaintiff amends the complaint, the court cannot refer to the
7 prior pleading in order to make plaintiff's amended complaint complete. See Local Rule 220. An
8 amended complaint must be complete in itself without reference to any prior pleading. See id.

9 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
10 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
11 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
12 each named defendant is involved, and must set forth some affirmative link or connection
13 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d
14 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

15 Because the complaint appears to otherwise state cognizable claims, if no amended
16 complaint is filed within the time allowed therefor, the court will issue findings and
17 recommendations that the claims identified herein as defective be dismissed, as well as such
18 further orders as are necessary for service of process as to the cognizable claims.

19 Accordingly, IT IS HEREBY ORDERED that plaintiff may file a first amended
20 complaint within 30 days of the date of service of this order.

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23 Dated: November 20, 2018

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25 DENNIS M. COTA
26 UNITED STATES MAGISTRATE JUDGE
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