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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EDWARD JONES,

 Plaintiff,

 v.

C. BALDWIN, et al.,

 Defendants.

No. 2:17-cv-2559-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel and in forma pauperis in an action brought under 42 U.S.C. § 1983. After dismissal of the original complaint pursuant to 28 U.S.C. § 1915A (ECF No. 11), plaintiff has filed a first amended complaint and a substantially similar second amended complaint, accompanied by a “memorandum” (ECF Nos. 14, 16, 17). He also requests the appointment of counsel (ECF Nos. 15 & 19).

Congress mandates that district courts engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b).

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1 particular defendant was deliberately indifferent to a known substantial risk of serious harm to
2 plaintiff. For instance, there are no allegations showing that defendants were aware of the risk
3 that another inmate would attack plaintiff and intentionally ignored that risk. Likewise, plaintiff
4 does not describe the contents of the grievance that allegedly put defendants “on notice,” nor does
5 he allege how Jackson or Qin were made aware of any such grievance. Plaintiff essentially
6 alleges his attack was made possible because of inadequate staff supervision – a claim that rings
7 only of negligence. Further, plaintiff names four additional defendants – Morton, Jiminez,
8 Arnold, and Neuschmid – but fails to plead any facts putting these defendants on notice of the
9 claims against them.

10 The court recognizes that plaintiff has filed various documents related to his prison
11 grievances and medical care. *See* ECF No. 14 at 24-56; ECF No. 16 at 21-57; ECF No. 17.
12 The court declines, however, to look through these documents in search of claims that are not
13 clearly raised by the complaint itself. *See Davis v. Carlton*, 2013 U.S. Dist. LEXIS 174334, *18
14 n. 1 (E.D. Cal. Dec. 12, 2013) (“The Court will not comb through attached exhibits seeking to
15 determine whether a claim possibly could have been stated where the pleading itself does not
16 state a claim.”).

17 The court will afford plaintiff a final opportunity to amend his complaint. Plaintiff is
18 admonished that, if his next complaint relies in any way on attached, documentary exhibits, he
19 must ensure that those exhibits are actually attached to his filing.

20 Leave to Amend

21 Any amended complaint must identify as a defendant only persons who personally
22 participated in a substantial way in depriving him of a federal constitutional right. *Johnson v.*
23 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a
24 constitutional right if he does an act, participates in another’s act or omits to perform an act he is
25 legally required to do that causes the alleged deprivation).

26 It must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

27 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *George*
28 *v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). Any amended complaint must be written or typed so

1 that it so that it is complete in itself without reference to any earlier filed complaint. E.D. Cal.
2 L.R. 220. This is because an amended complaint supersedes any earlier filed complaint, and once
3 an amended complaint is filed, the earlier filed complaint no longer serves any function in the
4 case. *See Forsyth v. Humana*, 114 F.3d 1467, 1474 (9th Cir. 1997) (the ““amended complaint
5 supersedes the original, the latter being treated thereafter as non-existent.””) (quoting *Loux v.*
6 *Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)).

7 Finally, the court notes that any amended complaint should be as concise as possible in
8 fulfilling the above requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of
9 procedural or factual background which has no bearing on his legal claims. He should also take
10 pains to ensure that his amended complaint is as legible as possible. This refers not only to
11 penmanship, but also spacing and organization. Lengthy, unbroken paragraphs can be difficult to
12 read when handwritten and plaintiff would do well to avoid them wherever possible.

13 Request for Appointment of Counsel

14 Plaintiff requests the appointment of counsel. District courts may authorize the
15 appointment of counsel to represent an indigent civil litigant in certain exceptional circumstances.
16 *See* 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.1991); *Wood v.*
17 *Housewright*, 900 F.2d 1332, 1335–36 (9th Cir.1990); *Richards v. Harper*, 864 F.2d 85, 87 (9th
18 Cir. 1988). In considering whether exceptional circumstances exist, the court must evaluate (1)
19 the plaintiff’s likelihood of success on the merits; and (2) the ability of the plaintiff to articulate
20 her claims pro se in light of the complexity of the legal issues involved. *Terrell*, 935 F.2d at
21 1017. The court cannot conclude that plaintiff’s likelihood of success, the complexity of the
22 issues, or the degree of plaintiff’s ability to articulate her claims amount to exceptional
23 circumstances justifying the appointment of counsel at this time.

24 Conclusion

25 Accordingly, IT IS ORDERED that:

- 26 1. The amended complaints (ECF Nos. 14, 16, 17) are dismissed with leave to amend
27 within 30 days. Failure to comply with this order may result a recommendation of
28 dismissal.

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2. Plaintiff's requests for the appointment of counsel (ECF Nos. 15 & 19) are denied.

DATED: April 29, 2019.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE