

1 each Defendant are less than clear.

2 Plaintiff alleges that Defendant J. Lewis was deliberately indifferent when he
3 denied Plaintiff's grievance related to his knee pain. Plaintiff alleges that Defendant J. Ma was
4 deliberately indifferent by failing to provide proper medical treatment. Plaintiff seems to indicate
5 J. Ma did not treat his knee issues, requiring another physician to drain Plaintiff's knee of fluid
6 and provide him steroid injections. Plaintiff asserts he is receiving no treatment from J. Ma other
7 than receiving ibuprofen. Plaintiff alleges M. Bobbala was deliberately indifferent in denying
8 Plaintiff's second level HC Appeal requesting the use of Tramadol. Plaintiff alleges P. Sahota
9 was deliberately indifferent in denying Plaintiff's request for pain relief despite knowing the pain
10 was "quite worse". Plaintiff alleges Defendant Chaiken was deliberately indifferent by denying
11 Plaintiff's request to be removed from Dr. J. Ma's case load and failing to address Plaintiff's plea
12 for pain relief. Finally, Plaintiff makes no allegations in the first amended complaint as to Does
13 1-5.

14 15 **III. ANALYSIS**

16 The treatment a prisoner receives in prison and the conditions under which the
17 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel
18 and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan,
19 511 U.S. 825, 832 (1994). The Eighth Amendment "... embodies broad and idealistic concepts
20 of dignity, civilized standards, humanity, and decency." Estelle v. Gamble, 429 U.S. 97, 102
21 (1976). Conditions of confinement may, however, be harsh and restrictive. See Rhodes v.
22 Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with
23 "food, clothing, shelter, sanitation, medical care, and personal safety." Toussaint v. McCarthy,
24 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only when
25 two requirements are met: (1) objectively, the official's act or omission must be so serious such
26 that it results in the denial of the minimal civilized measure of life's necessities; and (2)
27 subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of
28 inflicting harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison

1 official must have a “sufficiently culpable mind.” See id.

2 Deliberate indifference to a prisoner’s serious illness or injury, or risks of serious
3 injury or illness, gives rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 105;
4 see also Farmer, 511 U.S. at 837. This applies to physical as well as dental and mental health
5 needs. See Hoptowitz v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). An injury or illness is
6 sufficiently serious if the failure to treat a prisoner’s condition could result in further significant
7 injury or the “. . . unnecessary and wanton infliction of pain.” McGuckin v. Smith, 974 F.2d
8 1050, 1059 (9th Cir. 1992); see also Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994).
9 Factors indicating seriousness are: (1) whether a reasonable doctor would think that the condition
10 is worthy of comment; (2) whether the condition significantly impacts the prisoner’s daily
11 activities; and (3) whether the condition is chronic and accompanied by substantial pain. See
12 Lopez v. Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000) (en banc).

13 The requirement of deliberate indifference is less stringent in medical needs cases
14 than in other Eighth Amendment contexts because the responsibility to provide inmates with
15 medical care does not generally conflict with competing penological concerns. See McGuckin,
16 974 F.2d at 1060. Thus, deference need not be given to the judgment of prison officials as to
17 decisions concerning medical needs. See Hunt v. Dental Dep’t, 865 F.2d 198, 200 (9th Cir.
18 1989). The complete denial of medical attention may constitute deliberate indifference. See
19 Toussaint v. McCarthy, 801 F.2d 1080, 1111 (9th Cir. 1986). Delay in providing medical
20 treatment, or interference with medical treatment, may also constitute deliberate indifference. See
21 Lopez, 203 F.3d at 1131. Where delay is alleged, however, the prisoner must also demonstrate
22 that the delay led to further injury. See McGuckin, 974 F.2d at 1060.

23 Negligence in diagnosing or treating a medical condition does not, however, give
24 rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 106. Moreover, a
25 difference of opinion between the prisoner and medical providers concerning the appropriate
26 course of treatment does not give rise to an Eighth Amendment claim. See Jackson v. McIntosh,
27 90 F.3d 330, 332 (9th Cir. 1996).

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1 Plaintiff alleges sufficient facts against J. Ma to proceed past screening. However,
2 Plaintiff's allegations against J. Lewis, M. Bobbala, P. Sahota, S. Chaiken, and Does 1-5 cannot
3 pass screening. These allegations are all based on Plaintiff's belief that the modification to his
4 pain regime are ineffective at managing his pain despite several doctors and the Pain
5 Management Committee's determination that the modification is proper based on Plaintiff's
6 condition. This amounts to a difference of opinion between Plaintiff and these Defendants. Such
7 a difference of opinion, based on the facts alleged, does not state a claim sufficient to establish a
8 constitutional violation under the Eighth Amendment. See Jackson v. McIntosh, 90 F.3d at 332.
9 For that reason, Plaintiff's complaint cannot pass the screening stage.

11 IV. AMENDING THE COMPLAINT

12 Because it may be possible that some of the deficiencies identified in this order
13 may be cured by amending the complaint, plaintiff is entitled to leave to amend prior to dismissal
14 of the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).
15 Plaintiff is informed that, as a general rule, an amended complaint supersedes the original
16 complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following
17 dismissal with leave to amend, all claims alleged in the original complaint which are not alleged
18 in the amended complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).
19 Therefore, if plaintiff amends the complaint, the court cannot refer to the prior pleading in order
20 to make plaintiff's amended complaint complete. See Local Rule 220. An amended complaint
21 must be complete in itself without reference to any prior pleading. See id. This means, in
22 practical terms, if Plaintiff files an amended complaint he must not only cure the deficiencies
23 identified in this order, but also reallege the cognizable claim(s) discussed in this Court's order.

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
27 each named defendant is involved, and must set forth some affirmative link or connection
28 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d

1 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

2 Because the complaint appears to otherwise state cognizable claim, specifically
3 plaintiff's claim against J. Ma, if no amended complaint is filed within the time allowed therefor,
4 the court will issue findings and recommendations that the claims identified herein as defective be
5 dismissed, as well as such further orders as are necessary for service of process as to the
6 cognizable claim against J. Ma.

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V. CONCLUSION

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

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Dated: August 16, 2019

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DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE

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