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7 IN THE UNITED STATES DISTRICT COURT
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9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 FLEMING SMITH,

12 Plaintiff,

13 v.

14 J. CLARK KELSO, Receiver; DONALD
15 SPECTOR, Prison Law Office;
MICHAEL BEIN; C.D.C.R.,

16 Defendants.
17

No. C 13-3738 JSW (PR)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

18 **INTRODUCTION**

19 Plaintiff, a California prisoner at the California Training Facility ("CTF"), filed
20 this pro se civil rights complaint under 42 U.S.C. § 1983. His application to proceed *in*
21 *forma pauperis* is granted in a separate order. The complaint is dismissed with leave to
22 amend.

23 **STANDARD OF REVIEW**

24 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement
25 of the claim showing that the pleader is entitled to relief." "Specific facts are not
26 necessary; the statement need only "give the defendant fair notice of what the . . . claim
27 is and the grounds upon which it rests."" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200
28 (2007) (citations omitted). Although in order to state a claim a complaint "does not need

1 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his
2 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic
3 recitation of the elements of a cause of action will not do. . . . Factual allegations must
4 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
5 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer
6 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se
7 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
8 699 (9th Cir. 1990).

9 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:
10 (1) that a right secured by the Constitution or laws of the United States was violated, and
11 (2) that the alleged violation was committed by a person acting under the color of state
12 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

13 **LEGAL CLAIMS**

14 Plaintiff sues the receiver appointed by Judge Henderson in *Plata v.*
15 *Schwarzenegger*, No. C 01-1351 TEH, to oversee the delivery of medical care to
16 prisoners incarcerated by the California Department of Corrections and Rehabilitation
17 ("C.D.C.R."). He also sues two lawyers representing the plaintiffs in that case, as well as
18 the C.D.C.R. itself. Plaintiff only makes a single, generalized allegation that he is
19 "suffering from multiple medical disorders." It appears that Plaintiff is complaining
20 about the medical care he is receiving, and that he believes both the C.D.C.R. and the
21 receiver are responsible for such care. But he does not allege what medical problems he
22 has, what care he received or failed to receive, what involvement each of the Defendants
23 had in his medical care. Absent such allegations, he does not state a "plausible" claim
24 that Defendants violated his constitutional rights. He will be given leave to file an
25 amended complaint in which he explains what actions each of the Defendants took or
26 failed to take and how such actions or inactions caused him to suffer inadequate medical
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1 care that amounted to a denial of his Eighth Amendment rights. He states that more
2 information is “on file” with the Appeals Coordinators at various prisons, but he must
3 include such information in his amended complaint if he wants it to be considered part of
4 this action.


5 CONCLUSION

6 This case is DISMISSED WITH LEAVE TO AMEND.

7 Plaintiff shall file an amended complaint within **twenty eight (28) days from the**
8 **date this order is filed.** Plaintiff is advised to use the Court’s complaint form. The
9 amended complaint **must** include the caption and civil case number used in this order
10 (No. C 13-3738 JSW (PR)) and the words “COURT-ORDERED FIRST AMENDED
11 COMPLAINT” on the first page. Because an amended complaint completely replaces
12 the original complaint, *see Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992),
13 Plaintiff may not incorporate material from the original by reference. Failure to amend
14 within the designated time and in accordance with this order will result in the dismissal
15 of this action.

16 IT IS SO ORDERED.

17 DATED: October 3, 2013

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20 JEFFREY S. WHITE
21 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
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5 FLEMING SMITH,

Case Number: CV13-03738 JSW

6 Plaintiff,

CERTIFICATE OF SERVICE

7 v.

8 CDCR et al,


9 Defendant.
10 _____/

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on October 3, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
16 receptacle located in the Clerk's office.

17 Fleming Smith
18 N.C.D.F.
19 2254 Ordinance Road
20 Santa Rosa, CA 95403

21 Dated: October 3, 2013


22 Richard W. Wieking, Clerk
23 By: Jennifer Ottolini, Deputy Clerk
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