

1  
2  
3 UNITED STATES DISTRICT COURT  
4 NORTHERN DISTRICT OF CALIFORNIA  
5

6 RANDOLPH BOLDEN,

7 Plaintiff,

No. C 13-3919 EDL (PR)

8 v.

**ORDER DISMISSING WITH  
LEAVE TO AMEND**

9 DR. MACK, et. al.,

10 Defendant.  
11 \_\_\_\_\_/

12 Plaintiff, a state prisoner currently incarcerated at Salinas Valley State Prison, has  
13 filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to  
14 proceed in forma pauperis.

15 **DISCUSSION**

16 **A. Standard of Review**

17 Federal courts must engage in a preliminary screening of cases in which prisoners  
18 seek redress from a governmental entity or officer or employee of a governmental entity.  
19 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and  
20 dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief  
21 may be granted, or seek monetary relief from a defendant who is immune from such relief.  
22 *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica*  
23 *Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

24 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of  
25 the claim showing that the pleader is entitled to relief." "Specific facts are not necessary;  
26 the statement need only "give the defendant fair notice of what the . . . claim is and the  
27 grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations  
28 omitted). Although in order to state a claim a complaint "does not need detailed factual

1 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief  
2 requires more than labels and conclusions, and a formulaic recitation of the elements of a  
3 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief  
4 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)  
5 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is  
6 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained  
7 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the  
8 framework of a complaint, they must be supported by factual allegations. When there are  
9 well-pleaded factual allegations, a court should assume their veracity and then determine  
10 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662,  
11 679 (2009).

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

16 **B. Legal Claims**

17 Plaintiff alleges the defendant doctors from his prison and an outside hospital were  
18 deliberately indifferent to his serious medical needs.

19 Deliberate indifference to serious medical needs violates the Eighth Amendment's  
20 proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104  
21 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other*  
22 *grounds, WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc).  
23 A determination of "deliberate indifference" involves an examination of two elements: the  
24 seriousness of the prisoner's medical need and the nature of the defendant's response to  
25 that need. *Id.* at 1059.

26 A "serious" medical need exists if the failure to treat a prisoner's condition could  
27 result in further significant injury or the "unnecessary and wanton infliction of pain." *Id.*  
28

1 The existence of an injury that a reasonable doctor or patient would find important and  
2 worthy of comment or treatment; the presence of a medical condition that significantly  
3 affects an individual's daily activities; or the existence of chronic and substantial pain are  
4 examples of indications that a prisoner has a "serious" need for medical treatment. *Id.* at  
5 1059-60.

6 A prison official is deliberately indifferent if he or she knows that a prisoner faces a  
7 substantial risk of serious harm and disregards that risk by failing to take reasonable steps  
8 to abate it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The prison official must not only  
9 "be aware of facts from which the inference could be drawn that a substantial risk of  
10 serious harm exists," but he "must also draw the inference." *Id.* If a prison official should  
11 have been aware of the risk, but was not, then the official has not violated the Eighth  
12 Amendment, no matter how severe the risk. *Gibson v. County of Washoe*, 290 F.3d 1175,  
13 1188 (9th Cir. 2002). "A difference of opinion between a prisoner-patient and prison  
14 medical authorities regarding treatment does not give rise to a § 1983 claim." *Franklin v.*  
15 *Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981). In addition "mere delay of surgery, without  
16 more, is insufficient to state a claim of deliberate medical indifference.... [Prisoner] would  
17 have no claim for deliberate medical indifference unless the denial was harmful." *Shapely*  
18 *v. Nevada Bd. Of State Prison Comm'rs*, 766 F.2d 404, 407 (9th Cir. 1985).

19 Plaintiff states that he requested to see medical personnel after his left leg became  
20 swollen and painful in September 2012. Plaintiff was provided several medications,  
21 several laboratory tests were taken and he was seen by a radiologist who diagnosed  
22 plaintiff with bolus lung disease. Plaintiff was taken and treated at Natividad Medical  
23 Center, an outside hospital in November 2012. Plaintiff states an "IVC Filter" was placed  
24 into his body that is changed every two weeks and he also receives regular medication and  
25 shots to treat the bolus lung disease.

26 Plaintiff alleges that defendants have been deliberately indifferent to his serious  
27 medical needs in their treatment, yet provides no support for this assertion. He states they  
28

1 are not helping him to overcome the disease and should transfer him to a prison medical  
2 facility, but provides no other information on how this would help his condition. Based on  
3 his complaint and exhibits, it appears plaintiff has been receiving a great deal of treatment  
4 and there is nothing to demonstrate any failures to take reasonable steps to treat him.  
5 Simply stating the treatment has been insufficient, without more, fails to state a  
6 constitutional violation. Plaintiff must describe the adequate medical care that he states is  
7 being denied. Plaintiff's bare allegations are insufficient to state a claim under *Iqbal*. "A  
8 claim has facial plausibility when the plaintiff pleads factual content that allows the court to  
9 draw the reasonable inference that the defendant is liable for the misconduct alleged."  
10 *Iqbal*, 556 U.S., at 678. Plaintiff must also describe the specific acts of each defendant.  
11 The complaint will be dismissed with leave to amend for plaintiff to provide more  
12 information regarding the inadequacies of the medical care he is receiving and how it  
13 violated the Eighth Amendment.

14 Plaintiff also names as a defendant a doctor at the outside hospital, though plaintiff  
15 must demonstrate that this defendant is a state actor. A private individual's conduct  
16 constitutes action under color of state law if it is "fairly attributable" to the state. See *West*  
17 *v. Atkins*, 487 U.S. 42, 49-50 (1988). Conduct that allegedly caused the deprivation of a  
18 federal right may be fairly attributable to the state if (1) the deprivation is caused by the  
19 exercise of some right or privilege created by the state or by a rule of conduct imposed by  
20 the state or by a person for whom the state is responsible; and (2) the party charged with  
21 the deprivation is a person who may fairly be said to be a state actor. See *Fred Meyer, Inc.*  
22 *v. Casey*, 67 F.3d at 1414 (citing *Lugar v. Edmonson Oil Co.*, 457 U.S. at 937).

### 23 CONCLUSION

24 1. The complaint is **DISMISSED** with leave to amend in accordance with the  
25 standards set forth above. The amended complaint must be filed within **twenty-eight (28)**  
26 **days** of the date this order is filed and must include the caption and civil case number used  
27 in this order and the words AMENDED COMPLAINT on the first page. Because an  
28

1 amended complaint completely replaces the original complaint, plaintiff must include in it all  
2 the claims he wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.  
3 1992). He may not incorporate material from the original complaint by reference. Failure  
4 to amend within the designated time will result in the dismissal of this action.

5 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the  
6 court informed of any change of address by filing a separate paper with the clerk headed  
7 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.  
8 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to  
9 Federal Rule of Civil Procedure 41(b).

10 **IT IS SO ORDERED.**

11 Dated: September 16, 2013.

  
ELIZABETH D. LAPORTE  
United States Chief Magistrate Judge

12  
13 G:\PRO-SE\EDL\CR.13\Bolden3919.dwlta.wpd  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

RANDOLPH BOLDEN,  
Plaintiff,

Case Number: CV13-03919 EDL  
**CERTIFICATE OF SERVICE**

v.

DR MACK et al,  
Defendant.

---

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

That on September 17, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Randolph Bolden C-24526  
Salinas Valley State Prison  
A1-125 Low  
P.O. Box 1050  
Soledad, CA 93960-1050

Dated: September 17, 2013

Richard W. Wieking, Clerk  
By: Lisa R Clark, Deputy Clerk