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United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WINSTON WILLIAMS,  
Plaintiff,  
v.  
WILLIAM MUNIZ, et. al.,  
Defendants.

Case No. [17-cv-0098-TEH](#)

ORDER OF DISMISSAL WITH LEAVE  
TO AMEND

Plaintiff, an inmate at Salinas Valley State Prison, filed this pro se civil rights action under 42 U.S.C. § 1983. The original complaint was dismissed with leave to amend and Plaintiff has filed an amended complaint.

I

Federal courts must 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). Pleadings filed by pro se litigants, however, must be liberally construed. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010); *Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir.

1 1990).

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

7 II

8 Plaintiff states that he has received inadequate medical  
9 care.

10 Deliberate indifference to serious medical needs violates  
11 the Eighth Amendment's proscription against cruel and unusual  
12 punishment. Estelle v. Gamble, 429 U.S. 97, 104 (1976); McGuckin  
13 v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other  
14 grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136  
15 (9th Cir. 1997) (en banc). A determination of "deliberate  
16 indifference" involves an examination of two elements: the  
17 seriousness of the prisoner's medical need and the nature of the  
18 defendant's response to that need. Id. at 1059.

19 A "serious" medical need exists if the failure to treat a  
20 prisoner's condition could result in further significant injury  
21 or the "unnecessary and wanton infliction of pain." Id. The  
22 existence of an injury that a reasonable doctor or patient would  
23 find important and worthy of comment or treatment; the presence  
24 of a medical condition that significantly affects an individual's  
25 daily activities; or the existence of chronic and substantial  
26 pain are examples of indications that a prisoner has a "serious"  
27 need for medical treatment. Id. at 1059-60.

28

1           A prison official is deliberately indifferent if he or she  
2 knows that a prisoner faces a substantial risk of serious harm  
3 and disregards that risk by failing to take reasonable steps to  
4 abate it. Farmer v. Brennan, 511 U.S. 825, 837 (1994). The  
5 prison official must not only "be aware of facts from which the  
6 inference could be drawn that a substantial risk of serious harm  
7 exists," but he "must also draw the inference." Id. If a prison  
8 official should have been aware of the risk, but was not, then  
9 the official has not violated the Eighth Amendment, no matter how  
10 severe the risk. Gibson v. County of Washoe, 290 F.3d 1175, 1188  
11 (9th Cir. 2002). "A difference of opinion between a prisoner-  
12 patient and prison medical authorities regarding treatment does  
13 not give rise to a § 1983 claim." Franklin v. Oregon, 662 F.2d  
14 1337, 1344 (9th Cir. 1981).

15           Plaintiff states that Defendants failed to provide adequate  
16 treatment for his serious medical needs. He seeks money damages  
17 and injunctive relief. Plaintiff states that he suffers from  
18 constant pain regarding his shoulder; however, he provides no  
19 more information. It is not clear the nature of his injury or  
20 medical problem, nor does he describe the treatment that is  
21 needed which has been denied. Plaintiff states he was denied  
22 medical care on February 14, 2016, but he fails to describe the  
23 care that was denied. In order to obtain injunctive relief,  
24 Plaintiff must provide more information concerning the relief he  
25 seeks. While he has set forth the basic elements of the claim he  
26 has failed to provide sufficient factual allegations to support  
27 the claim. Plaintiff's original complaint contained the same  
28 deficiencies, and he was informed that he needed to provide more

1 information in an amended complaint. Unfortunately, the amended  
2 complaint is substantially similar to the original complaint and  
3 Plaintiff has failed to provide additional information.

4 A complaint must proffer "enough facts to state a claim to  
5 relief that is plausible on its face." Bell Atlantic Corp. v.  
6 Twombly, 550 U.S. 544, 570 (2007). The United States Supreme  
7 Court has explained the "plausible on its face" standard of  
8 Twombly: "While legal conclusions can provide the framework of a  
9 complaint, they must be supported by factual allegations. When  
10 there are well-pleaded factual allegations, a court should assume  
11 their veracity and then determine whether they plausibly give  
12 rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S.  
13 662, 679 (2009).

14 The amended complaint is dismissed with leave to amend to  
15 provide more information. Plaintiff should describe the medical  
16 problems with his shoulder and the specific actions of each  
17 Defendant that violated his constitutional rights. Plaintiff  
18 should describe what specific medical care was denied and how it  
19 violated his constitutional rights.

20 III

21 For the foregoing reasons, the Court hereby orders as  
22 follows:

23 1. Plaintiff's First Amended Complaint is DISMISSED WITH  
24 LEAVE TO FILE A Second AMENDED COMPLAINT, within twenty-eight  
25 days containing all related claims against all Defendants that  
26 Plaintiff wishes to proceed against in this action. The pleading  
27 must be simple, concise and direct and must state clearly and  
28 succinctly how each and every Defendant is alleged to have

1 violated Plaintiff's federally-protected rights. See Leer, 844  
2 F.2d at 634. The pleading must include the caption and civil  
3 case number used in this order and the words COURT ORDERED Second  
4 AMENDED COMPLAINT on the first page. Plaintiff is advised that  
5 he must file all of his claims in one complaint and not present  
6 them piecemeal to the Court in various letters and other  
7 documents. Failure to file a proper Second Amended Complaint  
8 within twenty-eight days of this order will result in the  
9 dismissal of this case.

10 2. Plaintiff is advised that the First Amended Complaint  
11 will supersede the original Complaint and all other pleadings.  
12 Claims and defendants not included in the First Amended Complaint  
13 will not be considered by the Court. See Lacey v. Maricopa  
14 County, 693 F.3d 896 (9th Cir. 2012) (en banc) ("For claims  
15 dismissed with prejudice and without leave to amend, we will not  
16 require that they be repled in a subsequent amended complaint to  
17 preserve them for appeal. But for any claims voluntarily  
18 dismissed, we will consider those claims to be waived if not  
19 repled.").

20 3. It is Plaintiff's responsibility to prosecute this  
21 action. Plaintiff must keep the Court informed of any change of  
22 address by filing a separate paper with the Clerk headed "Notice  
23 of Change of Address," and must comply with the Court's orders in  
24 a timely fashion. Failure to do so may result in the dismissal  
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1 of this action for failure to prosecute pursuant to Federal Rule  
2 of Civil Procedure 41(b).

3 IT IS SO ORDERED.

4 Dated: 5/11/2017



THELTON E. HENDERSON  
United States District Judge

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