

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RUDY SIMENTAL,  
Plaintiff,  
v.  
N. ADAMS, et al.,  
Defendants.

Case No. 17-cv-00801-MEJ (PR)

**ORDER OF DISMISSAL WITH LEAVE  
TO AMEND**

**INTRODUCTION**

Plaintiff, a California state inmate, filed this pro se civil rights complaint under 42 U.S.C. § 1983 claiming that defendants were deliberately indifferent to his serious medical needs. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the complaint is dismissed with leave to amend.

**DISCUSSION**

A. Standard of Review

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). Pro se pleadings must be liberally construed, however. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the

1 statement need only ‘give the defendant fair notice of what the . . . claim is and the grounds upon  
2 which it rests.’” Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although  
3 in order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s  
4 obligation to provide the grounds of his ‘entitle[ment] to relief’ requires more than labels and  
5 conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . .

6 Factual allegations must be enough to raise a right to relief above the speculative level.” Bell  
7 Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint  
8 must proffer “enough facts to state a claim for relief that is plausible on its face.” Id. at 1974.

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

13 B. Legal Claims

14 In his complaint, plaintiff alleges that defendant prison officials and staff delayed in  
15 diagnosing and treating a cancerous tumor in his right leg. Even after he finally received surgery,  
16 plaintiff alleges, defendants failed to provide necessary pain relief and physical accommodations  
17 and failed to follow discharge orders from the outside hospitals that treated him. Plaintiff alleges  
18 that this deficient medical treatment began at Pelican Bay State Prison (“PBSP”), where we was  
19 incarcerated from 2013 to July 2015, and at California State Prison, Sacramento (“CSP-SAC”),  
20 where he was transferred in July 2015 so that he could be closer to his treatment facility.

21 Deliberate indifference to a prisoner’s serious medical needs violates the Eighth  
22 Amendment’s proscription against cruel and unusual punishment. Estelle v. Gamble, 429 U.S. 97,  
23 104 (1976). A determination of “deliberate indifference” involves an examination of two  
24 elements: the seriousness of the prisoner’s medical need and the nature of the defendant’s response  
25 to that need. McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other  
26 grounds by WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). A  
27 prison official acts with deliberate indifference if he knows that a prisoner faces a substantial risk  
28 of serious harm and disregards that risk by failing to take reasonable steps to abate it. Farmer v.

1 Brennan, 511 U.S. 825, 837 (1994). The defendant must not only “be aware of facts from which  
2 the inference could be drawn that a substantial risk of serious harm exists,” but he “must also draw  
3 the inference.” Id. If the defendant should have been aware of the risk, but was not, then he has  
4 not violated the Eighth Amendment, no matter how severe the risk. Gibson v. County of Washoe,  
5 290 F.3d 1175, 1188 (9th Cir. 2002).

6 Neither negligence nor gross negligence warrant liability under the Eighth Amendment.  
7 Id. at 835-36 & n4. An “official’s failure to alleviate a significant risk that he should have  
8 perceived but did not, . . . cannot under our cases be condemned as the infliction of punishment.”  
9 Id. at 838. Instead, “the official’s conduct must have been ‘wanton,’ which turns not upon its  
10 effect on the prisoner, but rather, upon the constraints facing the official.” Frost v. Agnos, 152  
11 F.3d 1124, 1128 (9th Cir. 1998) (citing Wilson v. Seiter, 501 U.S. 294, 302-03 (1991)). Prison  
12 officials violate their constitutional obligation only by “intentionally denying or delaying access to  
13 medical care.” Estelle, 429 U.S. at 104-05.

14 Liberally construed, the complaint adequately alleges a claim for deliberate indifference to  
15 serious medical needs in violation of the Eighth Amendment as against defendants N. Adams, MD  
16 and D. Bodenhammer, PA-C. However, the complaint does not state a claim against the other  
17 defendants plaintiff identifies by name. In addition to Adams and Bodenhammer, plaintiff names  
18 M. Sayre, MD, J. Bal, MD, J. Arriola, RN, C. Regules, and J. Lewis as defendants, but provides  
19 no facts linking them to his allegations of wrongdoing. Even at the pleading stage, “[a] plaintiff  
20 must allege facts, not simply conclusions, that show that an individual was personally involved in  
21 the deprivation of his civil rights.” Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998);  
22 Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988). Plaintiff’s allegations will be dismissed with  
23 leave to amend to show what actions each defendant took or failed to take that caused the Eighth  
24 Amendment violations. Sweeping conclusory allegations will not suffice; plaintiff must instead  
25 “set forth specific facts as to each individual defendant’s deliberate indifference.” Leer, 844 F.2d  
26 at 634.

27 The Court notes that plaintiff names M. Sayre in his capacity as Chief Medical Officer for  
28 PBSP, C. Regules in his capacity as the Chief Support Executive for CSP-SAC, and J. Lewis in

1 his capacity as the Deputy Director for Policy and Risk Management Services at California  
2 Correctional Healthcare Services. Plaintiff is advised that a supervisor is not liable merely  
3 because the supervisor is responsible, in general terms, for the actions of another. Taylor v. List,  
4 880 F.2d 1040, 1045 (9th Cir. 1989); Ybarra v. Reno Thunderbird Mobile Home Village, 723 F.2d  
5 675, 680-81 (9th Cir. 1984). A supervisor may be liable only on a showing of (1) personal  
6 involvement in the constitutional deprivation or (2) a sufficient causal connection between the  
7 supervisor’s wrongful conduct and the constitutional violation. Henry A. v. Willden, 678 F.3d  
8 991, 1003-04 (9th Cir. 2012).

9 Finally, plaintiff has a Doe defendant problem. Specifically, plaintiff names Does 1-3 at  
10 CSP-SAC as defendants, but the complaint does not state a claim against Does 1-3. Specifically,  
11 as with the five defendants discussed above, the complaint provides insufficient facts linking Does  
12 1-3 to plaintiff’s allegations of wrongdoing. Further, plaintiff is advised that the use of “Jane  
13 Doe” or “John Doe” to identify a defendant is not favored in the Ninth Circuit. See Gillespie v.  
14 Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). Although the use of a Doe defendant designation is  
15 acceptable to withstand dismissal of a complaint at the initial review stage, using a Doe defendant  
16 designation creates its own problem: the person identified as a Doe cannot be served with process  
17 until he or she is identified by his or her real name. If plaintiff files an amended complaint,  
18 plaintiff must take steps promptly to discover the full name (i.e., first and last name) of each of the  
19 Doe defendants and provide that information to the Court in his amended complaint. The burden  
20 remains on the plaintiff; the Court cannot undertake to investigate the names and identities of  
21 unnamed defendants.

22 **CONCLUSION**

23 For the reasons stated above, the Court orders as follows:

- 24 1. The complaint is dismissed with leave to amend. If plaintiff believes he can cure  
25 the above-mentioned deficiencies in good faith, plaintiff must file an AMENDED COMPLAINT  
26 within **thirty (30)** days from the date of this order. The pleading must be simple and concise and  
27 must include the caption and civil case number used in this order (17-0801 MEJ (PR)) and the  
28 words AMENDED COMPLAINT on the first page. Plaintiff may not incorporate material from

1 the prior complaint by reference. **Failure to file the amended complaint by the deadline will**  
2 **result in the dismissal of the action.** The Clerk of the Court is directed to send plaintiff a blank  
3 civil rights form along with his copy of this order.

4 2. Plaintiff is advised that an amended complaint supersedes the original complaint.  
5 “[A] plaintiff waives all causes of action alleged in the original complaint which are not alleged in  
6 the amended complaint.” London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981).  
7 Defendants not named in an amended complaint are no longer defendants. See Ferdik v. Bonzelet,  
8 963 F.2d 1258, 1262 (9th Cir. 1992).

9 3. It is plaintiff’s responsibility to prosecute this case. Plaintiff must keep the Court  
10 informed of any change of address by filing a separate paper with the Clerk headed “Notice of  
11 Change of Address,” and must comply with the Court’s orders in a timely fashion. Failure to do  
12 so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of  
13 Civil Procedure 41(b).

14 **IT IS SO ORDERED.**

15 Dated: April 6, 2017



---

MARIA-ELENA JAMES  
United States Magistrate Judge

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28