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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

JAMES MARION SIMS,
Plaintiff,
v.
D. SCANLON,
Defendant.

Case No. [17-cv-01905-LB](#)

ORDER OF SERVICE

Re: ECF Nos. 1, 10

INTRODUCTION

James Marion Sims, an inmate currently housed at the California State Prison - Sacramento, filed this *pro se* prisoner's civil rights action under 42 U.S.C. § 1983. He consented to proceed before a magistrate judge. (ECF No. 2.)¹ The court reviewed the complaint and dismissed it with leave to amend so that Mr. Sims could provide the true name of a defendant. Mr. Sims then filed a one-page "amended complaint" that contains no allegations but does provide the true name of the defendant. This order construes the "amended complaint" to be an amendment to the complaint, and orders service of process on that one defendant.

¹ Record citations refer to material in the Electronic Case File ("ECF"); pinpoint cites are to the ECF-generated page numbers at the top of the documents.

1 **STATEMENT**

2 Mr. Sims alleges the following in his complaint: On April 11, 2014, an unidentified dentist at
3 Salinas Valley State Prison performed unauthorized cosmetic surgery on Mr. Sims. “The dentist
4 cut 2 of [Mr. Sims’] side teeth in half,” damaging his nerves and making it painful to chew hard
5 food. (ECF No. 1 at 3.) The dentist was “deliberat[ely] indifferent to the pain he knew he could
6 cause” Mr. Sims. (*Id.*)

7 Mr. Sims’ “amended complaint” identifies the dentist as D. Scanlon. (ECF No. 10.) The
8 “amended complaint” contains no other allegations.

9 **ANALYSIS**

10 A federal court must engage in a preliminary screening of any case in which a prisoner seeks
11 redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C.
12 § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims
13 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
14 monetary relief from a defendant who is immune from such relief. *See id.* at § 1915A(b). *Pro se*
15 complaints must be liberally construed. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).

16 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right
17 secured by the Constitution or laws of the United States was violated, and (2) that the violation
18 was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48
19 (1988).

20 Deliberate indifference to an inmate’s serious medical needs violates the Eighth Amendment’s
21 proscription against cruel and unusual punishment. *See Estelle v. Gamble*, 429 U.S. 97, 104
22 (1976); *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004). To establish an Eighth
23 Amendment claim on a condition of confinement, such as medical care, a prisoner-plaintiff must
24 show: (1) an objectively, sufficiently serious, deprivation, and (2) the defendant was, subjectively,
25 deliberately indifferent to the inmate’s health or safety. *See Farmer v. Brennan*, 511 U.S. 825, 834
26 (1994). Serious medical needs may include dental care needs. *See Hunt v. Dental Dep’t*, 865 F.2d
27 198, 200 (9th Cir. 1989).

1 The court construes the “amended complaint” (ECF No. 10) to be an amendment to the
2 complaint (ECF No. 1), rather than an actual amended complaint. The difference is that an
3 amendment will be read together with the complaint, whereas an amended complaint would
4 supersede the original complaint. *See Lacey v. Maricopa County*, 693 F.3d 896, 927 (9th Cir.
5 2012) (en banc).

6 The complaint, as amended, alleges that Dr. Scanlon performed unauthorized and damaging
7 dental work that caused pain to Mr. Sims. A cognizable claim Eighth Amendment claim is stated
8 against Dr. Scanlon for deliberate indifference to Mr. Sims’ dental needs.

9 **CONCLUSION**

10 1. Liberally construed, the complaint, as amended, states a cognizable § 1983 claim against
11 Dr. D. Scanlon for deliberate indifference to Mr. Sims’ dental needs. All other defendants are
12 dismissed.

13 2. The clerk shall issue a summons and the United States Marshal shall serve, without
14 prepayment of fees, the summons, a copy of the complaint, a copy of the “amended complaint,” a
15 copy of all the other documents in the case file, and a copy of the “consent or declination to
16 magistrate judge jurisdiction” form on Dr. D. Scanlon in the dental department at Salinas Valley
17 State Prison.

18 3. In order to expedite the resolution of this case, the following briefing schedule for
19 dispositive motions is set:

20 a. No later than **October 6, 2017**, the defendant must file and serve a motion for
21 summary judgment or other dispositive motion. If the defendant is of the opinion that this case
22 cannot be resolved by summary judgment, the defendant must so inform the court prior to the date
23 the motion is due. If the defendant files a motion for summary judgment, the defendant must
24 provide to the plaintiff a new *Rand* notice regarding summary judgment procedures at the time the
25 motion is filed. *See Woods v. Carey*, 684 F.3d 934, 939 (9th Cir. 2012). If the motion is based on
26 nonexhaustion of administrative remedies, the defendant must comply with the notice and
27 procedural requirements in *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014).

1 must be mailed to counsel rather than directly to that defendant.

2 6. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No
3 further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16 is required
4 before the parties may conduct discovery.

5 7. The plaintiff is responsible for prosecuting this case. The plaintiff must promptly keep the
6 court informed of any change of address and must comply with the court's orders in a timely
7 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
8 to Federal Rule of Civil Procedure 41(b). The plaintiff must file a notice of change of address in
9 every pending case every time he is moved to a new facility or is released from custody.

10 8. The plaintiff is cautioned that he must include the case name and case number for this case
11 on any document he submits to the court for consideration in this case.

12 **IT IS SO ORDERED.**

13 Dated: June 30, 2017



LAUREL BEELER
United States Magistrate Judge

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