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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

SANTIAGO MARTINEZ,

Plaintiff,

No. C 12-6164 PJH (PR)

vs.

**ORDER DISMISSING WITH  
LEAVE TO AMEND**

KEVIN R. CHAPPELL,

Defendant.

Plaintiff, a state prisoner, has filed a pro se civil rights complaint. Plaintiff's previous complaint was dismissed with leave to amend and plaintiff has filed an amended complaint.

**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). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *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 statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations 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*, 129 S.Ct.  
11 1937, 1950 (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 states he has had lower back pain since the age of thirteen and for the past  
18 several years in prison he has been prescribed Tramadol for the pain. Plaintiff was  
19 prescribed Tramadol and other drugs when he arrived at San Quentin State Prison.  
20 Several weeks later a blood test indicated that there was no Tramadol in plaintiff's system  
21 which is indicative of not taking the medication and in violation of the medication agreement  
22 between the prison and inmates. As a result, plaintiff was no longer prescribed Tramadol  
23 and instead prescribed Acetaminophen for the pain. Plaintiff states he expressed his  
24 symptoms of lower back pain but he is still being denied the Tramadol.

25 Deliberate indifference to serious medical needs violates the Eighth Amendment's  
26 proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104  
27 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other*  
28 *grounds, WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc).

1 A determination of "deliberate indifference" involves an examination of two elements: the  
2 seriousness of the prisoner's medical need and the nature of the defendant's response to  
3 that need. *Id.* at 1059.

4 A "serious" medical need exists if the failure to treat a prisoner's condition could  
5 result in further significant injury or the "unnecessary and wanton infliction of pain." *Id.* The  
6 existence of an injury that a reasonable doctor or patient would find important and worthy of  
7 comment or treatment; the presence of a medical condition that significantly affects an  
8 individual's daily activities; or the existence of chronic and substantial pain are examples of  
9 indications that a prisoner has a "serious" need for medical treatment. *Id.* at 1059-60.

10 A prison official is deliberately indifferent if he or she knows that a prisoner faces a  
11 substantial risk of serious harm and disregards that risk by failing to take reasonable steps  
12 to abate it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The prison official must not only  
13 "be aware of facts from which the inference could be drawn that a substantial risk of serious  
14 harm exists," but he "must also draw the inference." *Id.* If a prison official should have  
15 been aware of the risk, but was not, then the official has not violated the Eighth  
16 Amendment, no matter how severe the risk. *Gibson v. County of Washoe*, 290 F.3d 1175,  
17 1188 (9th Cir. 2002). "A difference of opinion between a prisoner-patient and prison  
18 medical authorities regarding treatment does not give rise to a § 1983 claim." *Franklin v.*  
19 *Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981).

20 In this case, plaintiff focuses on the difference of opinion with his medical providers,  
21 but this alone fails to state a claim. *See Franklin*. Plaintiff must set forth facts that  
22 defendants were deliberately indifferent to his serious medical needs. Simply stating that  
23 he needed Tramadol but was only provided Acetaminophen, without providing more factual  
24 allegations in support is insufficient. "[A] complaint must contain sufficient factual matter,  
25 accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at  
26 678 (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff  
27 pleads factual content that allows the court to draw the reasonable inference that the  
28 defendant is liable for the misconduct alleged." *Id.*

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**CONCLUSION**

1. The amended complaint is **DISMISSED** with leave to amend in accordance with the standards set forth above. The second amended complaint must be filed no later than **April 1, 2013**, and must include the caption and civil case number used in this order and the words SECOND AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the original complaint, plaintiff must include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to amend within the designated time will result in the dismissal of these claims.

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

**IT IS SO ORDERED.**

Dated: February 26, 2013.



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PHYLLIS J. HAMILTON  
United States District Judge

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