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

6 No. C 13-0246 PJH

7 ALONZO SMITH,
8 Plaintiff,
9 v.
10 DR. R. MACK, et al.,
11 Defendants.
12**ORDER GRANTING MOTION
FOR SCREENING OF FIRST
AMENDED COMPLAINT;
REQUIRING MOVING
DEFENDANTS TO REPLY TO
FIRST AMENDED
COMPLAINT; REQUIRING
MEET AND CONFER RE
SERVICE; SETTING CASE
MANAGEMENT
CONFERENCE**13 Plaintiff Alonzo Smith, a state prisoner currently incarcerated at Salinas Valley State
14 Prison, has filed a complaint under 42 U.S.C. § 1983. The original pro se complaint was
15 dismissed with leave to amend and plaintiff, now represented, has filed a first amended
16 complaint ("FAC"). Plaintiff was granted leave to proceed in forma pauperis, and has since
17 paid the filing fee in full. Plaintiff's counsel served the summons and complaint on six of the
18 nine named defendants. Defendants M. Sensi, R.T.C. Grounds, V. C. Munk, G. Ellis and
19 R. Mack have filed a motion for screening of the FAC pursuant to 28 U.S.C. § 1915A(a).
2021 **DISCUSSION**22 **A. Standard of Review**23 Federal courts must engage in a preliminary screening of cases in which prisoners
24 seek redress from a governmental entity or officer or employee of a governmental entity.
25 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and
26 dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may
27 be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at
28 1915A(b)(1), (2).

1 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of
2 the claim showing that the pleader is entitled to relief.” “Specific facts are not necessary;
3 the statement need only ‘give the defendant fair notice of what the . . . claim is and the
4 grounds upon which it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations
5 omitted). Although in order to state a claim a complaint “does not need detailed factual
6 allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’
7 requires more than labels and conclusions, and a formulaic recitation of the elements of a
8 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
9 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
10 (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is
11 plausible on its face.” *Id.* at 570. The United States Supreme Court has explained the
12 “plausible on its face” standard of *Twombly* as follows: “While legal conclusions can provide
13 the framework of a complaint, they must be supported by factual allegations. When there
14 are well-pleaded factual allegations, a court should assume their veracity and then
15 determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 566
16 U.S. 622, 679 (2009).

17 **B. Legal Claims**

18 Plaintiff alleges that his jaw was broken in a fight and that he was seen at A Facility
19 at SVSP by defendant Wittenberg, who transferred plaintiff to the clinical treatment center
20 (“CTC”) for treatment. Plaintiff spent six weeks in the CTC, during which time he was
21 allegedly harassed by Correctional Officer Para and Doe defendant members of the CTC
22 custody staff. At CTC, plaintiff became ill and began vomiting; Doe defendants denied
23 plaintiff assistance for two days, then a nurse cut the wire holding his jaws shut to allow him
24 to clear his mouth upon vomiting. His jaws were not rewired back together, and plaintiff
25 was returned to his housing unit at SVSP with an order for a soft-chopped diet. Plaintiff
26 alleges that after informing the infirmary staff that he could not eat regular meals, he was
27 not provided a soft chopped food diet to make it easier to eat. Plaintiff alleges that he had
28 difficulty eating the regular meal because of the pain caused by even slight jaw movement.

1 He alleges that defendants Mack, Munk, Knorton, Wittenberg, Baker, Senisi, and Doe
2 defendants refused to help him or provide the medically required diet. Plaintiff alleges that
3 he has continued to suffer severe pain in his jaw, that he has not been able to eat normally,
4 that his pain medication is inadequate, that he is constantly hungry, that he has lost weight,
5 and that his speech has been affected. He further alleges that defendants Grounds and
6 Ellis established the practice and policies by which their subordinates denied plaintiff proper
7 medical care.

8 **C. Screening**

9 In the February 13, 2013 initial screening order, the court held that the allegations
10 were sufficient to state a constitutional claim against defendants Dr. Munk and Dr. Mack for
11 the failure to provide him a sufficient diet. However, the court dismissed the claims against
12 the remaining defendants with leave to amend, except as to Canchola, for failure to link
13 them to the alleged Eighth Amendment deprivation. Because plaintiff's claims are
14 governed by section 1915A, the court is required to review the FAC. It appears from the
15 docket that plaintiff's counsel obtained issuance of the summons and had service effected
16 on defendants Wittenburg, M. Sensi, R.T.C. Grounds, V. C. Munk, G. Ellis and R. Mack.
17 Doc. nos. 14, 17-21. Notwithstanding plaintiff's contention that a paralegal was told by a
18 clerk of the court that the screening had already been completed, the record shows that the
19 court has not reviewed the claims asserted in the FAC, as required by section 1915A.
20 Defendants' request for screening is therefore GRANTED, and the court proceeds with its
21 review of the FAC.

22 Medical claims like the one presented by plaintiff are actionable under section 1983
23 only if plaintiff is able to allege facts plausibly asserting that he was the victim of deliberate
24 indifference to a serious medical need, a violation of the Eighth Amendment's proscription
25 against cruel and unusual punishment. See *Estelle v. Gamble*, 429 U.S. 97, 104 (1976);
26 *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds by*
27 *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). A
28 determination of "deliberate indifference" involves an examination of two elements: the

1 seriousness of the prisoner’s medical need and the nature of the defendant’s response to
2 that need. See *McGuckin*, 974 F.2d at 1059.

3 Liability may be imposed on an individual defendant under 42 U.S.C. § 1983 if the
4 plaintiff can show that the defendant proximately caused the deprivation of a federally
5 protected right. See *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988); *Harris v. City of*
6 *Roseburg*, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives another of a
7 constitutional right within the meaning of section 1983 if he does an affirmative act,
8 participates in another’s affirmative act or omits to perform an act which he is legally
9 required to do, that causes the deprivation of which the plaintiff complains. See *Leer*, 844
10 F.2d at 633. The inquiry into causation must be individualized and focus on the duties and
11 responsibilities of each individual defendant whose acts or omissions are alleged to have
12 caused a constitutional deprivation. See *Leer*, 844 F.2d at 633 (citations omitted). Plaintiff
13 must “set forth specific facts as to each individual defendant’s” actions which violated his
14 rights. *Leer*, 844 F.2d at 634. At the pleading stage, “[a] plaintiff must allege facts, not
15 simply conclusions, that show that an individual was personally involved in the deprivation
16 of his civil rights.” *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998).

17 Plaintiff has sufficiently alleged a claim of deliberate indifference to a serious medical
18 need against defendants Mack, Munk, Knorton, Wittenberg, Baker, and Senisi, who is
19 identified by defense counsel as M. Sensi. As to defendant Para, however, the allegations
20 that Para refused to allow plaintiff out for recreation or fresh air during the six weeks he was
21 at CTC fails to allege a claim of deliberate indifference to a serious medical need in
22 violation of his civil rights.

23 Plaintiff further seeks injunctive relief against defendants Grounds, the warden of
24 SVSP, and Ellis, the CEO of medical services, to direct them to provide plaintiff with
25 dietary, pain relief or other ongoing care measures pursuant to an independent medical
26 evaluation. Failure to provide a system of ready access to adequate medical care, failure
27 to provide a medical staff competent to examine and diagnose inmates’ problems and
28 failure to treat the problems or refer the inmates to others who could, for physical, dental

1 and mental health problems, are violations of the Eighth Amendment. *Hoptowit v. Ray*, 682
2 F.2d 1237, 1253 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner*, 515
3 U.S. 472 (1995). The allegations of the FAC are sufficient to state a plausible claim for
4 injunctive relief against Grounds and Ellis.

5 Plaintiff also seeks relief against correctional officer Para and defendant Baker for
6 suppressing his written grievances and medical requests in violation of his First
7 Amendment rights. There is no constitutional right to a specific prison grievance
8 procedure, and the FAC fails to identify a right protected by the First Amendment. See
9 *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003); *Mann v. Adams*, 855 F.2d 639, 640
10 (9th Cir. 1988). To the extent plaintiff alleges that his grievances were improperly
11 suppressed, these allegations fail to state a cognizable claim.

12 CONCLUSION

13 1. Defendants' motion for screening of plaintiff's first amended complaint is
14 GRANTED.

15 2. Defendant Para is DISMISSED with prejudice.

16 3. Pursuant to 42 U.S.C. § 1997e(g)(2), defendants M. Sensi, R.T.C. Grounds,
17 V. C. Munk, G. Ellis and R. Mack are ordered to file an answer or otherwise respond to the
18 first amended complaint within **twenty-one days** of the date of this order.

19 4. As summonses have not yet issued for defendants Baker and Knorton,
20 counsel for plaintiff and the moving defendants are directed to meet and confer as to
21 whether defense counsel will waive service of summons and accept service for Baker and
22 Knorton, who plaintiff alleges are employed at SVSP. If the parties do not reach an
23 agreement as to service, plaintiff's counsel may file, within **twenty-one days** of the date of
24 this order, a request for issuance of summons and service by the United States Marshal on
25 Baker and Knorton, pursuant to plaintiff's in forma pauperis status. Alternatively, plaintiff's
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1 counsel may serve the summons, a copy of the complaint with attachments and a copy of
2 this order on defendants Baker and Knorton.

3 5. An initial case management conference is set for **January 9, 2014, at 2:00**
4 **p.m.**, in Courtroom 3, 3rd Floor, Federal Building, 1301 Clay Street, Oakland, California.
5 Counsel shall meet and confer as required by Fed. R. Civ. P. 26(f) prior to the Case
6 Management Conference with respect to those subjects set forth in Fed. R. Civ. P. 16(c).
7 Not less than seven (7) days before the conference, counsel shall file a joint case
8 management statement addressing each of the items listed in the "Standing Order For All
9 Judges Of the Northern District -- Contents of Joint Case Management Statement," which is
10 available on the court website. A proposed order is not necessary. Following the
11 conference, the court will enter its own Case Management and Pretrial Order. If any party
12 is proceeding without counsel, separate statements may be filed by each party.

13 Each party shall appear personally or by counsel prepared to address all of the
14 matters referred to in this Order and with authority to enter stipulations and make
15 admissions pursuant to this Order. Any request to reschedule the date of the conference
16 shall be made in writing, and by stipulation if possible, at least ten (10) calendar days
17 before the date of the conference and must be based upon good cause.

18 **IT IS SO ORDERED.**

19
20 Dated: October 30, 2013



PHYLLIS J. HAMILTON
United States District Judge