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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DEAN C. THOMAS,  
Plaintiff,

v.

KEVIN CHAPPALL, et al.,  
Defendants.

Case No. [15-cv-02541-PJH](#)

**ORDER OF DISMISSAL WITH LEAVE  
TO AMEND**

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has paid the filing fee.

**DISCUSSION**

**I. 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

1 factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment]  
2 to relief' requires more than labels and conclusions, and a formulaic recitation of the  
3 elements of a cause of action will not do. . . . Factual allegations must be enough to  
4 raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550  
5 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer "enough facts to state  
6 a claim to relief that is plausible on its face." *Id.* at 570. The United States Supreme  
7 Court has recently explained the "plausible on its face" standard of *Twombly*: "While legal  
8 conclusions can provide the framework of a complaint, they must be supported by factual  
9 allegations. When there are well-pleaded factual allegations, a court should assume their  
10 veracity and then determine whether they plausibly give rise to an entitlement to relief."  
11 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (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 **II. LEGAL CLAIMS**

17 Plaintiff states that he has been denied proper medical accommodations.

18 Deliberate indifference to serious medical needs violates the Eighth Amendment's  
19 proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104  
20 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other*  
21 *grounds, WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en  
22 banc). A determination of "deliberate indifference" involves an examination of two  
23 elements: the seriousness of the prisoner's medical need and the nature of the  
24 defendant's response to that need. *Id.* at 1059.

25 A "serious" medical need exists if the failure to treat a prisoner's condition could  
26 result in further significant injury or the "unnecessary and wanton infliction of pain." *Id.*  
27 The existence of an injury that a reasonable doctor or patient would find important and  
28 worthy of comment or treatment; the presence of a medical condition that significantly

1 affects an individual's daily activities; or the existence of chronic and substantial pain are  
2 examples of indications that a prisoner has a "serious" need for medical treatment. *Id.* at  
3 1059-60.

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

14 Plaintiff alleges that he has a history of chronic spinal and joint pain and he has  
15 had lumbar surgery that was unsuccessful. An outside doctor recommended that plaintiff  
16 have a lower bunk to avoid climbing to an upper bunk which could lead to injury. Plaintiff  
17 had been provided a lower bunk but it was discontinued by defendants. He seeks  
18 reinstatement of the lower bunk. Plaintiff states it was discontinued on May 13, 2015,  
19 and he filed this case on May 29, 2015. It does not appear that he has exhausted  
20 administrative remedies prior to commencing this action and it is possible the relief he  
21 seeks has already been granted.<sup>1</sup> While plaintiff states that he exhausted his grievances  
22 for a lower bunk, that grievance was denied in March 2015, prior his lower bunk being  
23 discontinued. The complaint will be dismissed with leave to amend to address these  
24 discrepancies. Plaintiff should also further describe the specific actions of the named  
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26 <sup>1</sup> The Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321 (1996)  
27 ("PLRA"), amended 42 U.S.C. § 1997e to provide that "[n]o action shall be brought with  
28 respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a  
prisoner confined in any jail, prison, or other correctional facility until such administrative  
remedies as are available are exhausted." 42 U.S.C. § 1997e(a).

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defendants and their role in the denial of the lower bunk.

**CONCLUSION**

1. The complaint is **DISMISSED** with leave to amend in accordance with the standards set forth above. The amended complaint must be filed no later than **August 25, 2015**, and must include the caption and civil case number used in this order and the words 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.

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: July 21, 2015



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PHYLLIS J. HAMILTON  
United States District Judge

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**CERTIFICATE OF SERVICE**


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 21, 2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Dean C. Thomas  
T-84535  
San Quentin State Prison  
San Quentin, CA 94974

Dated: July 21, 2015

Richard W. Wieking  
Clerk, United States District Court

By:   
Nichole Peric, Deputy Clerk to the  
Honorable PHYLLIS J. HAMILTON