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2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5 RICHARD DE'VONN WEBB,

6 Plaintiff,

7 v.

8 C.E. DUCART, et al.,

9 Defendants.

Case No. 17-cv-00330-HSG (PR)

**ORDER OF DISMISSAL WITH LEAVE  
TO AMEND**

10  
11 **INTRODUCTION**

12 Plaintiff, an inmate at Centinela State Prison, proceeding *pro se*, filed this civil rights  
13 action pursuant to 42 U.S.C. § 1983 against officials and staff at Pelican Bay State Prison  
14 (“PBSP”), where he was previously incarcerated. He is granted leave to proceed in forma  
15 pauperis in a separate order. Based upon a review of the complaint pursuant to 28 U.S.C.  
16 § 1915A, it is dismissed with leave to amend.

17 **ANALYSIS**

18 **A. Standard of Review**

19 A federal court must engage in a preliminary screening of any case in which a prisoner  
20 seeks redress from a governmental entity, or from an officer or an employee of a governmental  
21 entity. 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims, and  
22 dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be  
23 granted, or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C.  
24 § 1915A(b) (1), (2). *Pro se* pleadings must be liberally construed. *Balistreri v. Pacifica Police*  
25 *Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

26 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the  
27 claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Specific facts are not  
28 necessary; the statement need only ‘give the defendant fair notice of what the . . . claim is and the

1 grounds upon which it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted).  
2 “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more  
3 than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not  
4 do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.”  
5 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must  
6 proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570.

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

11 **B. Legal Claims**

12 According to the complaint, from June 2015 to January 2016, while incarcerated at PBSP,  
13 defendants failed to treat plaintiff for his Graves Disease. As a result, plaintiff suffered extreme  
14 weight loss and body aches. Plaintiff was also placed in Administrative Segregation, where he  
15 was misdiagnosed by psychiatric and medical staff.

16 Plaintiff alleges an Eighth Amendment claim for deliberate indifference to serious medical  
17 needs. He names the following individuals as defendants: PBSP Wardens Ducart and Barnes,  
18 Adam Nancy, M.D., M. Sayer, M.D., Ronn Johnson, Ph.D., David Archambault, Ph.D., and Susan  
19 Risenhoover, FNP.

20 Deliberate indifference to a prisoner’s serious medical needs violates the Eighth  
21 Amendment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *McGuckin v. Smith*, 974 F.2d 1050,  
22 1059 (9th Cir. 1992), *overruled on other grounds*, *WMX Technologies, Inc. v. Miller*, 104 F.3d  
23 1133, 1136 (9th Cir. 1997) (en banc). A prison official violates the Eighth Amendment only when  
24 two requirements are met: (1) the deprivation alleged is, objectively, sufficiently serious, and  
25 (2) the official is, subjectively, deliberately indifferent to the inmate’s health or safety. *Farmer v.*  
26 *Brennan*, 511 U.S. 825, 834 (1994). A “serious” medical need exists if the failure to treat a  
27 prisoner’s condition could result in further significant injury or the “unnecessary and wanton  
28 infliction of pain.” *McGuckin*, 974 F.2d at 1059.

1           A prison official is deliberately indifferent if she or he knows that a prisoner faces a  
2 substantial risk of serious harm and disregards that risk by failing to take reasonable steps to abate  
3 it. *Farmer*, 511 U.S. at 837. The prison official must not only “be aware of facts from which the  
4 inference could be drawn that a substantial risk of serious harm exists,” but he or she “must also  
5 draw the inference.” *Id.* “Prison officials are deliberately indifferent to a prisoner’s serious  
6 medical needs when they deny, delay, or intentionally interfere with medical treatment. . . . Mere  
7 negligence in diagnosing or treating a medical condition, without more, does not violate a  
8 prisoner’s Eighth Amendment rights.” *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000)  
9 (citation omitted); *see Farmer*, 511 U.S. at 835-36 & n.4 (recognizing that neither negligence nor  
10 gross negligence will constitute deliberate indifference).

11           Plaintiff’s allegations that he suffered from Graves Disease, which went untreated and/or  
12 misdiagnosed, establish that he had a serious medical need. However, the complaint does not  
13 sufficiently link any named defendant to this claim. Plaintiff’s vague and conclusory allegations  
14 regarding the failure to provide medical treatment amount, at most, to negligence, which is  
15 insufficient to state an Eighth Amendment claim. *Estelle*, 429 U.S. at 106 (negligence in treating  
16 medical condition does not state valid Eighth Amendment claim). Therefore, the Eighth  
17 Amendment claim is dismissed. Dismissal is with leave to amend for plaintiff to add allegations  
18 that show defendants knew about plaintiff’s serious medical need and deliberately prevented  
19 plaintiff from receiving medical care or failed to treat his serious medical need. In his amended  
20 complaint, plaintiff must link one or more defendants to this claim by stating what each proposed  
21 defendant did or failed to do that caused a violation of his constitutional rights.

22           With respect to named defendants Ducart and Barnes, plaintiff has indicated that he named  
23 these individuals as defendants because they hired or contracted out the medical staff defendants.  
24 Supervisory personnel are generally not liable under § 1983 for the actions of their employees.  
25 *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that there is no respondeat  
26 superior liability under § 1983). A supervisor may be liable only on a showing of (1) personal  
27 involvement in the constitutional deprivation, or (2) a sufficient causal connection between the  
28 supervisor’s wrongful conduct and the constitutional violation. *Henry A. v. Willden*, 678 F.3d

1 991, 1003-04 (9th Cir. 2012). Plaintiff is given leave to amend to add such allegations, if he  
2 truthfully can do so.

3 **CONCLUSION**

4 For the foregoing reasons, the Court hereby orders as follows:

5 1. Plaintiff's complaint is DISMISSED with leave to amend.

6 2. Within **thirty (30)** days from the date of this order, plaintiff must file an amended  
7 complaint to cure the deficiencies noted above, if he truthfully can do so. Plaintiff shall use the  
8 court's civil rights complaint form, a copy of which is provided herewith, and include in the  
9 caption both the case number of this action, No. C 17-0330 HSG (PR), and the heading  
10 "AMENDED COMPLAINT." **Failure to file the amended complaint by the deadline will**  
11 **result in the dismissal of the action.**

12 3. Plaintiff is advised that an amended complaint supersedes the original complaint.  
13 "[A] plaintiff waives all causes of action alleged in the original complaint which are not alleged in  
14 the amended complaint." *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981).  
15 Plaintiff may not incorporate material from the prior complaint by reference.

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

21 5. The Clerk shall send plaintiff a blank civil rights form along with his copy of this  
22 order.

23 **IT IS SO ORDERED.**

24 Dated: 3/31/2017

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27 HAYWOOD S. GILLIAM, JR.  
28 United States District Judge