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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THOMAS EUGENE MOORE,)	No. C 14-2566 LHK (PR)
)	
Plaintiff,)	ORDER OF DISMISSAL WITH
)	LEAVE TO AMEND
vs.)	
)	
CALIFORNIA DEPARTMENT OF)	
CORRECTIONS AND)	
REHABILITATIONS DIRECTOR J.)	
BEARD, et al.,)	
)	
Defendants.)	

Plaintiff, a California state prisoner proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the court dismisses the complaint with leave to amend.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that 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. *See id.* § 1915A(b)(1),

1 (2). *Pro se* pleadings must, however, be liberally construed. *See Balistreri v. Pacifica Police*
2 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

3 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:
4 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that
5 the alleged deprivation was committed by a person acting under the color of state law. *West v.*
6 *Atkins*, 487 U.S. 42, 48 (1988).

7 B. Plaintiff's Claims

8 In July 2004, plaintiff alleges that defendants¹ allowed drinking water within Monterey
9 County, Salinas, Soledad, and SVSP to become contaminated, toxic, and undrinkable for human
10 consumption. Between July 2004 and August 2004, while plaintiff was confined at SVSP,
11 plaintiff became ill on Facility C. The water became contaminated and warnings were given via
12 flyers and posters that plaintiff should not drink the water at SVSP facilities because of unsafe
13 conditions. But, it was too late because plaintiff had already been ingesting the water.
14 Defendants CDCR Director J. Beard, Warden Lamarque, Governor Brown Jr., and Doe #1
15 turned off the drinking water from plaintiff's cell, and plaintiff was given bottled water by the
16 cup. Eight years later, on November 8, 2012, plaintiff was diagnosed with prostate cancer, and
17 on October 23, 2013, plaintiff discovered that the nitrate and other hazardous materials that were
18 present in the water in 2004 is one of the chemicals known to cause cancer. Plaintiff claims that
19 defendants exposed plaintiff to these chemicals, which caused plaintiff's cancer.

20 The complaint has several deficiencies that require an amended complaint to be filed.
21 First, the Eighth Amendment's prohibition of "cruel and unusual punishments" imposes a duty
22 on prison officials to, among other things, "'take reasonable measures to guarantee the safety of
23 the inmates.'" *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (quoting *Hudson v. Palmer*, 468
24 U.S. 517, 526-27 (1984)). A prison official violates the Eighth Amendment only when two

26 ¹ Plaintiff names as defendants the California Department of Corrections and
27 Rehabilitations ("CDCR") Director J. Beard; Salinas Valley State Prison Warden Lamarque;
28 Governor J. Brown; the County of Monterey; the City of Soledad; the Monterey County Water
Resources Agency; the Monterey Peninsula Water Management District; and Doe Defendants.

1 requirements are met: (1) the deprivation is, objectively, sufficiently serious; and (2) the prison
2 official is, subjectively, deliberately indifferent to inmate safety. *See Farmer*, 511 U.S. at 834.
3 The test for deliberate indifference is the same as criminal recklessness, i.e., the official must
4 actually know of and disregard an excessive risk to inmate safety. *See id.* at 837. The official
5 “must both be aware of facts from which the inference could be drawn that a substantial risk of
6 serious harm exists, and he must also draw the inference.” *Id.* Neither negligence nor gross
7 negligence constitutes deliberate indifference. *See id.* at 835-36 & n.4; *Estelle v. Gamble*, 429
8 U.S. 97, 106 (1976).

9 Even with liberal construction, the complaint does not state a claim for an Eighth
10 Amendment violation against these defendants. Liability may be imposed on an individual
11 defendant under 42 U.S.C. § 1983 if the plaintiff can show that a defendant’s actions both
12 actually and proximately caused the deprivation of a federally protected right. *Lemire v. Cal.*
13 *Dept. of Corrections & Rehabilitation*, 726 F.3d 1062, 1085 (9th Cir. 2013); *Leer v. Murphy*,
14 844 F.2d 628, 634 (9th Cir. 1988). Either personal involvement or integral participation of the
15 officers in the alleged constitutional violation is required before liability may be imposed;
16 liability may not be imposed based solely on an officer’s presence during the incident. *See*
17 *Hopkins v. Bonvicino*, 573 F.3d 752, 769-70 (9th Cir. 2009) (holding that although “integral
18 participant” rule may not be limited to officers who provide armed backup, officer who waits in
19 front yard and does not participate in search of residence not an integral participant).

20 Here, plaintiff does not link each individual defendant to any action or inaction that
21 would demonstrate that defendant is liable for any wrongdoing. Plaintiff’s own allegations
22 appear to show that defendants Beard, Lamarque, Brown, and Doe #1 warned inmates about not
23 drinking the water, and then they shut down the drinking water in plaintiff’s cell and began
24 issuing bottled water in its stead. Liberally construed, those allegations do not demonstrate that
25 defendants were criminally reckless regarding plaintiff’s safety. As stated, at most plaintiff
26 states a claim for negligence or gross negligence, neither of which are cognizable under § 1983.
27 Even at the pleading stage, “[a] plaintiff must allege facts, not simply conclusions, that show that
28 an individual was personally involved in the deprivation of his civil rights.” *Barren v.*

1 complaint must include the caption and civil case number used in this order (C 14-2566 LHK
2 (PR)) and the words AMENDED COMPLAINT on the first page. Plaintiff may not incorporate
3 material from the prior complaint by reference. **Failure to file an amended complaint within
4 thirty days and in accordance with this order will result in a finding that further leave to
5 amend would be futile and this action will be dismissed.**

6 3. Plaintiff is advised that an amended complaint supersedes the original complaint.
7 “[A] plaintiff waives all causes of action alleged in the original complaint which are not alleged
8 in the amended complaint.” *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981).
9 Defendants not named in an amended complaint are no longer defendants. *See Ferdik v.*
10 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).

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

16 IT IS SO ORDERED.

17 DATED:

