

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 KYLE ROBERT JAMES,
12 Booking # 15746082,

13 Plaintiff,

14 vs.

15 BARBARA LEE, et al.
16

17 Defendants.
18
19
20
21

Case No.: 3:16-cv-01592-AJB-JLB

**ORDER DISMISSING SECOND
AMENDED COMPLAINT AS
FRIVOLOUS AND FOR FAILING
TO STATE A CLAIM PURSUANT
TO 28 U.S.C. § 1915(e)(2) AND
§ 1915A(b)**

22 **I. Procedural History**

23 On June 21, 2016, Plaintiff, Kyle James, currently incarcerated at the California
24 State Prison - Los Angeles County located in Lancaster, California, filed a civil rights
25 Complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1) and a Motion to Proceed In Forma
26 Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 2). Because Plaintiff’s
27 Motion to Proceed IFP complied with 28 U.S.C. § 1915(a)(2), the Court granted him
28 leave to proceed without full prepayment of the civil filing fees required by 28 U.S.C.

1 § 1914(a), but dismissed his Complaint for failing to state a claim pursuant to 28 U.S.C.
2 § 1915(e)(2) and § 1915A(b). On November 16, 2016, Plaintiff filed his First Amended
3 Complaint (“FAC”). (ECF No. 6.) In this FAC, Plaintiff names only Defendant Barbara
4 Lee, John Doe Doctor, Jane Doe Doctor and “S.D.C.J. Med. Supervisor” as Defendants.

5 The Court, once again, dismissed Plaintiff’s FAC on the grounds that he failed to
6 state a claim and as frivolous pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). (ECF
7 No. 8.) On March 30, 2017, Plaintiff filed his Second Amended Complaint (“SAC”). In
8 his SAC, Plaintiff again names Barbara Lee as a Defendant but also adds Defendants
9 Kania and Harvel.

10 **II. Legal Standards for Screening Complaint Pursuant to 28 U.S.C.**
11 **§§ 1915(e)(2)(B) and 1915A(b)**

12 Because Plaintiff is a prisoner and is proceeding IFP, his FAC requires a pre-
13 Answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these
14 statutes, the Court must sua sponte dismiss a prisoner’s IFP complaint, or any portion of
15 it, which is frivolous, malicious, fails to state a claim, or seeks damages from defendants
16 who are immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
17 (discussing 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir.
18 2010) (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is ‘to ensure that
19 the targets of frivolous or malicious suits need not bear the expense of responding.’”
20 *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting *Wheeler v. Wexford*
21 *Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)).

22 “The standard for determining whether a plaintiff has failed to state a claim upon
23 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
24 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668
25 F.3d 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th
26 Cir. 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard
27 applied in the context of failure to state a claim under Federal Rule of Civil Procedure
28 12(b)(6)”). Rule 12(b)(6) requires a complaint to “contain sufficient factual matter,

1 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*,
2 556 U.S. 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121.

3 Detailed factual allegations are not required, but “[t]hreadbare recitals of the
4 elements of a cause of action, supported by mere conclusory statements, do not suffice.”
5 *Iqbal*, 556 U.S. at 678. “Determining whether a complaint states a plausible claim for
6 relief [is] . . . a context-specific task that requires the reviewing court to draw on its
7 judicial experience and common sense.” *Id.* The “mere possibility of misconduct” or
8 “unadorned, the defendant-unlawfully-harmed me accusation[s]” fall short of meeting
9 this plausibility standard. *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969
10 (9th Cir. 2009).

11 **A. 42 U.S.C. § 1983**

12 Title 42 U.S.C. § 1983 provides a cause of action for the “deprivation of any rights,
13 privileges, or immunities secured by the Constitution and laws” of the United States.
14 *Wyatt v. Cole*, 504 U.S. 158, 161 (1992). To state a claim under § 1983, a plaintiff must
15 allege two essential elements: (1) that a right secured by the Constitution or laws of the
16 United States was violated, and (2) that the alleged violation was committed by a person
17 acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Long v. Cty. of*
18 *Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006).

19 **B. Duplicative claims**

20 Plaintiff broadly alleges that during the two and one-half years he was in the
21 custody of the San Diego County Sheriff’s Department (“SDCSD”) he was “never treated
22 for nerve damage” in his hands. (SAC at 4.) Plaintiff claims that the injuries to his hands
23 was “caused by Sheriff Employees L.T. Kania, Sgt. Blackwell, Lance Tade and many
24 other deputies.” (*Id.*)

25 Here, the Court takes judicial notice that Plaintiff has two pending actions
26 involving use of force by SDCSD deputies, including claims against Blackwell and Tade,
27 and therefore, Plaintiff’s SAC is subject to sua sponte dismissal pursuant to 28 U.S.C.
28 §§ 1915(e)(2) & 1915A(b) because it contains claims which are duplicative of these two

1 other actions. *See James v. Agnew, et al.*, S.D. Cal. Civil Case No. 3:15-cv-00409-AJB-
2 MDD and *James v. Emmens, et al.*, S.D. Cal. Civil Case No. 3:16-cv-2823-WQH-NLS. A
3 court ““may take notice of proceedings in other courts, both within and without the
4 federal judicial system, if those proceedings have a direct relation to matters at issue.””
5 *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic,*
6 *Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

7 A prisoner’s complaint is considered frivolous if it “merely repeats pending or
8 previously litigated claims.” *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir.
9 1995) (construing former 28 U.S.C. § 1915(d)) (citations and internal quotations
10 omitted). Because Plaintiff appears to be litigating the identical claims presented in the
11 instant action in *James v. Agnew, et al.*, S.D. Cal. Civil Case No. 3:15-cv-00409-AJB-
12 MDD and *James v. Emmens, et al.*, S.D. Cal. Civil Case No. 3:16-cv-2823-WQH-NLS,
13 the Court must dismiss these duplicative claims pursuant to 28 U.S.C. § 1915A(b)(1). *See*
14 *Cato*, 70 F.3d at 1105 n.2; *Resnick*, 213 F.3d at 446 n.1.

15 C. Medical Care Claims

16 Plaintiff alleges that he has “nerve damage in [his] hands” which Defendants
17 “failed to treat.” (SAC at 4.) Plaintiff claims Defendant Lee “had knowledge of my
18 medical issue with the nerve damage in my hands” and for “one reason or another
19 managed to avoid providing treatment.” (*Id.*)

20 Prison officials are liable only if they are deliberately indifferent to the prisoner’s
21 serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 105-06 (1976); *see also Clouthier*
22 *v. Cnty. of Contra Costa*, 591 F.3d 1232, 1241-44 (9th Cir. 2010) (applying *Estelle*’s
23 Eighth Amendment deliberate indifference standard to inadequate medical care claims
24 alleged to violate a pretrial detainees’ due process rights).

25 Here, Plaintiff claims he suffers from “nerve damage” but he fails to include any
26 further “factual matter” sufficient to show or describe how or to what extent his medical
27 needs were objectively serious. *See McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir.
28 1991) (defining a “serious medical need” as one which the “failure to treat ... could result

1 in further significant injury or the ‘unnecessary and wanton infliction of pain.’”),
2 *overruled on other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997)
3 (en banc) (citing *Estelle*, 429 U.S. at 104). The “existence of an injury that a reasonable
4 doctor or patient would find important and worthy of comment or treatment; the presence
5 of a medical condition that significantly affects an individual’s daily activities; or the
6 existence of chronic and substantial pain are examples of indications that a prisoner has a
7 ‘serious’ need for medical treatment.” *McGuckin*, 974 F.3d at 1059-60.

8 Moreover, even if the Court assumes Plaintiff’s medical conditions were
9 “objectively serious,” nothing in his SAC supports a “reasonable inference that [any
10 individual] defendant” acted with deliberate indifference to his plight. *Iqbal*, 556 U.S. at
11 678. “In order to show deliberate indifference, an inmate must allege sufficient facts to
12 indicate that prison officials acted with a culpable state of mind.” *Wilson v. Seiter*, 501
13 U.S. 294, 302 (1991). Plaintiff simply alleges that Defendant Lee was “aware” of his
14 medical condition but he fails to allege any specific facts regarding Lee’s responses to his
15 requests for treatment. (SAC at 4.) There are no specific allegations as to the date that
16 Plaintiff claims he sustained this injury, the dates which he requested medical treatment
17 and was allegedly denied, or the identity of any specific medical personnel whom he
18 claims failed to treat him.

19 In addition, the indifference to medical needs also must be substantial; inadequate
20 treatment due to malpractice, or even gross negligence, does not amount to a
21 constitutional violation. *Estelle*, 429 U.S. at 106; *Toguchi v. Chung*, 391 F.3d 1051, 1060
22 (9th Cir. 2004) (“Deliberate indifference is a high legal standard.”) (citing *Hallett v.*
23 *Morgan*, 296 F.3d 732, 1204 (9th Cir. 2002); *Wood v. Housewright*, 900 F.2d 1332, 1334
24 (9th Cir. 1990)).

25 In his SAC, Plaintiff claims that the “Sheriff’s blanket policy restricting
26 medications like gabapentin to prisoners like [Plaintiff]” is “cruel and unusual
27 punishment.” However, a difference of opinion between a pretrial detainee and the
28 doctors or other trained medical personnel at the Jail as to the appropriate course or type

1 of medical attention he requires does not amount to deliberate indifference, *see Snow v.*
2 *McDaniel*, 681 F.3d 978, 987 (9th Cir. 2012) (citing *Sanchez v. Vild*, 891 F.2d 240, 242
3 (9th Cir. 1989)).

4 Thus, Plaintiff’s SAC, as currently pleaded, does not include facts to show that any
5 individual San Diego Jail official actually knew of, yet disregarded any serious medical
6 need. *See Gibson v. Cnty. of Washoe, Nev.*, 290 F.3d 1175, 1193 (9th Cir. 2002)
7 (“[D]eliberate indifference requires the defendant to be subjectively aware that serious
8 harm is likely to result from a failure to provide medical care.”). Nor does it allege that
9 any decision to refuse or delay a particular course of medical treatment caused him actual
10 harm. *See McGuckin*, 974 F.2d at 1060. Without more, Plaintiff’s SAC currently amounts
11 only to “unadorned, the defendant[s]-unlawfully-harmed-me accusation[s],” which
12 “stop[] short of the line between possibility and plausibility of ‘entitlement to relief’” as
13 to any constitutionally inadequate medical care claim. *Iqbal*, 556 U.S. at 678.

14 **D. Respondeat Superior**

15 Plaintiff claims in general terms that Sheriff Bill Gore had “knowledge of [his]
16 injury” but “did nothing to treat me.” (SAC at 9.) Plaintiff fails to state a claim upon
17 which § 1983 relief can be granted because he sets forth no individualized allegations of
18 wrongdoing by Sheriff Gore, and instead seeks to hold him vicariously liable for the
19 actions of his deputies. *See Iqbal*, 556 U.S. at 676 (“Because vicarious liability is
20 inapplicable to . . . § 1983 suits,” Plaintiff “must plead that each Government-official
21 defendant, though the official’s own individual actions, has violated the Constitution.”)

22 Plaintiff’s SAC contains no factual allegations describing what Defendant Sheriff
23 Gore knew, did, or failed to do, with regard to Plaintiff’s medical needs. *Estate of Brooks*
24 *v. United States*, 197 F.3d 1245, 1248 (9th Cir. 1999) (“Causation is, of course, a required
25 element of a § 1983 claim.”) “The inquiry into causation must be individualized and
26 focus on the duties and responsibilities of each individual defendant whose acts or
27 omissions are alleged to have caused a constitutional deprivation.” *Leer v. Murphy*, 844
28

1 F.2d 628, 633 (9th Cir. 1988), citing *Rizzo v. Goode*, 423 U.S. 362, 370-71 (1976); *Berg*
2 *v. Kincheloe*, 794 F.2d 457, 460 (9th Cir. 1986).

3 Thus, without some specific “factual content” that might allow the Court to “draw
4 the reasonable inference” that Sheriff Gore may be held personally liable for any
5 unconstitutional conduct directed at Plaintiff, the Court finds his SAC, as currently
6 pleaded, contains allegations which *Iqbal* makes clear fail to “state a claim to relief that is
7 plausible on its face.” *Iqbal*, 556 U.S. at 568.

8 **E. Leave to Amend**

9 A pro se litigant must be given leave to amend his or her complaint to state a claim
10 unless it is absolutely clear the deficiencies of the complaint cannot be cured by
11 amendment. *See Lopez*, 203 F.3d at 1130 (noting leave to amend should be granted when
12 a complaint is dismissed under 28 U.S.C. § 1915(e) “if it appears at all possible that the
13 plaintiff can correct the defect”). Therefore, while the Court finds Plaintiff’s SAC fails to
14 state any claim upon which relief can be granted, it will provide him a chance to fix the
15 pleading deficiencies discussed in this Order. *See Akhtar v. Mesa*, 698 F.3d 1202, 1212
16 (9th Cir. 2012) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)).
17 However, the Court cautions Plaintiff that he may not include allegations raised in other
18 actions.

19 **III. Conclusion and Order**

20 Good cause appearing, the Court:

21 1. **DISMISSES** Plaintiff’s SAC as frivolous and for failing to state a claim
22 upon which § 1983 relief can be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and
23 1915A(b).

24 2. **GRANTS** Plaintiff forty-five (45) days leave in which to file an Amended
25 Complaint which cures all the deficiencies of pleading described in this Order. Plaintiff is
26 cautioned, however, that should he choose to file an Amended Complaint, it must be
27 complete by itself, comply with Federal Rule of Civil Procedure 8(a), and that any claim
28 not re-alleged will be considered waived. *See S.D. CAL. CIVLR 15.1; Hal Roach Studios*,

1 *Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended
2 pleading supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir.
3 2012) (noting that claims dismissed with leave to amend which are not re-alleged in an
4 amended pleading may be “considered waived if not repled.”).

5 3. **DIRECTS** the Clerk of Court to mail to Plaintiff, together with this Order, a
6 blank copy of the Court’s form “Complaint under the Civil Rights Act, 42 U.S.C.
7 § 1983” for his use in amending.

8 **IT IS SO ORDERED.**

9 Dated: April 7, 2017

10 
11 Hon. Anthony J. Battaglia
12 United States District Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28