

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

NOAH SCHRODER,  
Plaintiff,  
v.  
CHRIS JOHNSON; RONA SIEGERT;  
and P.A. REESE,  
Defendants.

Case No. 1:21-cv-00106-DCN

**INITIAL REVIEW ORDER BY  
SCREENING JUDGE**

The Clerk of Court conditionally filed Plaintiff Noah Schroder's Complaint as a result of Plaintiff's status as an inmate and in forma pauperis request.<sup>1</sup> The Court now reviews the Complaint to determine whether it should be summarily dismissed in whole or in part under 28 U.S.C. §§ 1915 and 1915A.

Having reviewed the record, and otherwise being fully informed, the Court enters the following Order directing Plaintiff to file an amended complaint if Plaintiff intends to proceed.

**1. Screening Requirement**

The Court must review complaints filed by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity, as well as

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<sup>1</sup> The Clerk of Court opened this case when the claims herein were severed from another of Plaintiff's cases: *Schroder v. Christensen*, 1:20-cv-00583-DCN (D. Idaho). See Dkt. 2. That case remains pending as to Plaintiff's conditions-of-confinement claims; the instant case involves Plaintiff's medical treatment claims.

complaints filed in forma pauperis, to determine whether summary dismissal is appropriate. The Court must dismiss a complaint or any portion thereof that states a frivolous or malicious claim, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b).

## **2. Pleading Standard**

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A complaint fails to state a claim for relief under Rule 8 if the factual assertions in the complaint, taken as true, are insufficient for the reviewing court plausibly “to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “[D]etailed factual allegations” are not required, but a plaintiff must offer “more than ... unadorned, the-defendant-unlawfully-harmed-me accusation[s].” *Id.* (internal quotation marks omitted). If the facts pleaded are “merely consistent with a defendant’s liability,” or if there is an “obvious alternative explanation” that would not result in liability, the complaint has not stated a claim for relief that is plausible on its face. *Id.* at 678, 682 (internal quotation marks omitted). And, a court is not required to comb through a plaintiff’s exhibits or other filings to determine if the complaint states a plausible claim.

## **3. Factual Allegations**

Plaintiff is a prisoner in the custody of the Idaho Department of Correction (“IDOC”) currently incarcerated at the Idaho State Correctional Center. Plaintiff asserts

that he has been denied adequate medical treatment for a torn or ruptured Achilles tendon.

*Compl.*, Dkt. 1, at 2–4. Plaintiff alleges the following as to each Defendant:

Defendant ... was made aware I had a torn or ruptured achellie [sic] tendon. Despite [sic] being aware of this I was left untreated for months. This delay in treatment has left me handicapped. The prisons [sic] own “treatment plan” wasnt [sic] carried out or followed through with in a timley [sic] manner. Knowing I was injured and suffering in pain is a deliberate indifference to my serious medical needs.

*Compl.*, Dkt. 1, at 2–4.

Plaintiff sues Health Services Administrator Chris Johnson and P.A. or N.P. Reese, both of whom may be employed by Corizon, the private company providing medical treatment under contract with the IDOC. Plaintiff also sues Rona Siegert, the Healthcare Services Director for the IDOC, who acted as the Level 3 Responder in Plaintiff’s administrative grievance process. Plaintiff claims that Defendants have violated the Eighth Amendment. *Id.*

#### **4. Discussion**

Plaintiff has not alleged sufficient facts to proceed with the Complaint. The Court will, however, grant Plaintiff 60 days to amend the Complaint. Any amended complaint should take into consideration the following.

##### ***A. Section 1983 Claims***

Plaintiff brings claims under 42 U.S.C. § 1983, the civil rights statute. To state a plausible civil rights claim, a plaintiff must allege a violation of rights protected by the Constitution or created by federal statute proximately caused by conduct of a person acting under color of state law. *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). To be

liable under § 1983, “the defendant must possess a purposeful, a knowing, or possibly a reckless state of mind.” *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2472 (2015). Negligence is not actionable under § 1983, because a negligent act by a public official is not an abuse of governmental power but merely a “failure to measure up to the conduct of a reasonable person.” *Daniels v. Williams*, 474 U.S. 327, 332 (1986).

Prison officials and prison medical providers generally are not liable for damages in their individual capacities under § 1983 unless they personally participated in the alleged constitutional violations. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989); *see also Iqbal*, 556 U.S. at 677 (“[E]ach Government official, his or her title notwithstanding, is only liable for his or her own misconduct.”). Section 1983 does not allow for recovery against an employer or principal simply because an employee or agent committed misconduct. *Taylor*, 880 F.2d at 1045.

However, “[a] defendant may be held liable as a supervisor under § 1983 ‘if there exists ... a sufficient causal connection between the supervisor’s wrongful conduct and the constitutional violation.’” *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011) (quoting *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989)). A plaintiff can establish this causal connection by alleging that a defendant (1) set in motion a series of acts by others that violated the Constitution, or knowingly refused to terminate a series of such acts, which the supervisor “knew or reasonably should have known would cause others to inflict a constitutional injury”; (2) knowingly failed to act or acted improperly “in the training, supervision, or control of his subordinates”; (3) acquiesced in the constitutional deprivation; or (4) engaged in “conduct that showed a reckless or callous indifference to

the rights of others.” *Id.* at 1205–09 (internal quotation marks omitted).

Administrative or supervisory defendants who were involved in reviewing claims in an administrative grievance process might or might not be liable for the constitutional violations complained of in those grievances, depending upon (1) the type and timing of problem complained of, and (2) the role of the defendant in the process. For example, an appeals coordinator cannot cause or contribute to a completed constitutional violation, which occurred in the past and which is not remediable by any action the reviewer might take. *See, e.g., George v. Smith*, 507 F.3d 605, 609–610 (7th Cir. 2007) (“A guard who stands and watches while another guard beats a prisoner violates the Constitution; a guard who rejects an administrative complaint about a completed act of misconduct does not.”). A defendant whose only role in a completed constitutional violation involved the denial of a grievance “cannot be liable under § 1983.” *Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999).

If, however, the administrative or supervisory defendant “knew of an ongoing constitutional violation and … had the authority and opportunity to prevent the ongoing violation,” yet failed to act to remedy the violation, then the defendant may be held liable under § 1983. *Herrera v. Hall*, 2010 WL 2791586 at \*4 (E.D. Cal. July 14, 2010) (unpublished) (citing *Taylor*, 880 F.2d at 1045), *report and recomm’n adopted*, 2010 WL 3430412 (E.D. Cal. Aug. 30, 2010). Where claims are asserted against persons who supervise the provision of prison medical care, the question is not whether the supervisor was “directly involved” in the plaintiff’s medical treatment. *Gonzalez v. Ahmed*, 67 F. Supp. 3d 1145, 1156 (N.D. Cal. 2014). Instead, the question is whether the Complaint

plausibly alleges that the supervisor “knowing[ly] fail[ed] to address” the treating provider’s deficient care, thereby interfering with the plaintiff’s medical treatment. *Id.*

The Eighth Amendment to the United States Constitution protects prisoners against cruel and unusual punishment. To state a claim under the Eighth Amendment, prisoners must plausibly allege that they are “incarcerated under conditions posing a substantial risk of serious harm,” or that they have been deprived of “the minimal civilized measure of life’s necessities” as a result of the defendants’ actions. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (internal quotation marks omitted). An Eighth Amendment claim requires the plaintiff to satisfy both (1) an objective standard, “that the deprivation was serious enough to constitute cruel and unusual punishment,” and (2) a subjective standard, that the defendant acted with “deliberate indifference.” *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012), *overruled in part on other grounds by Peralta v. Dillard*, 744 F.3d 1076 (9th Cir. 2014) (en banc).

The Eighth Amendment includes the right to adequate medical and mental health treatment in prison. Prison officials or prison medical providers can be held liable if their “acts or omissions [were] sufficiently harmful to evidence deliberate indifference to serious medical needs.” *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

Regarding the objective standard for prisoners’ medical care claims, “society does not expect that prisoners will have unqualified access to health care.” *Hudson v. McMillian*, 503 U.S. 1, 9 (1992). Therefore, “deliberate indifference to medical needs amounts to an Eighth Amendment violation only if those needs are ‘serious.’” *Id.* The Ninth Circuit has defined a “serious medical need” in the following ways:

failure to treat a prisoner’s condition [that] could result in further significant injury or the unnecessary and wanton infliction of pain[;] ... [t]he existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual’s daily activities; or the existence of chronic and substantial pain ....

*McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992) (internal citations omitted), overruled on other grounds, *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc).

As to the subjective standard, “deliberate indifference entails something more than mere negligence, [but] is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result.” *Farmer*, 511 U.S. at 835. A prison official or prison medical provider acts with deliberate indifference “only if the [prison official or provider] knows of and disregards an excessive risk to inmate health and safety.” *Gibson v. Cnty. of Washoe*, 290 F.3d 1175, 1187 (9th Cir. 2002) (internal quotation marks omitted), overruled on other grounds by *Castro v. Cty. of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016) (en banc). “Under this standard, the prison official must not only ‘be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists,’ but that person ‘must also draw the inference.’” *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004) (quoting *Farmer*, 511 U.S. at 837).

In the medical context, deliberate indifference can be “manifested by prison doctors in their response to the prisoner’s needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed.” *Estelle*, 429 U.S. at 104–05 (footnotes omitted). Medical malpractice or

negligence does not support a cause of action under the Eighth Amendment, *Broughton v. Cutter Labs.*, 622 F.2d 458, 460 (9th Cir. 1980) (per curiam), and a delay in medical treatment does not violate the Eighth Amendment unless that delay causes further harm, *McGuckin*, 974 F.2d at 1060. Additionally, there is no constitutional right to an outside medical provider of one's own choice. *See Roberts v. Spalding*, 783 F.2d 867, 870 (9th Cir. 1986) (“A prison inmate has no independent constitutional right to outside medical care additional and supplemental to the medical care provided by the prison staff within the institution.”).

“If a [prison official] should have been aware of the risk, but was not, then the [official] has not violated the Eighth Amendment, no matter how severe the risk.” *Gibson*, 290 F.3d at 1188. Moreover, even prison officials or medical providers who *did* know of a substantial risk to an inmate’s health will not be liable under § 1983 “if they responded reasonably to the risk, even if the harm ultimately was not averted.” *Farmer*, 511 U.S. at 844. If medical personnel have been “consistently responsive to [the inmate’s] medical needs,” and the plaintiff has not shown that the medical personnel had “subjective knowledge and conscious disregard of a substantial risk of serious injury,” there has been no Eighth Amendment violation. *Toguchi*, 391 F.3d at 1061.

“There is not one proper way to practice medicine in a prison, but rather a range of acceptable courses based on prevailing standards in the field.” *Jackson v. Kotter*, 541 F.3d 688, 697 (7th Cir. 2008) (internal quotation marks omitted). Accordingly, differences in judgment as to appropriate medical diagnosis and treatment between an inmate and prison medical providers—or, for that matter, between medical providers—are not enough to

establish a deliberate indifference claim. *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989).

“[T]o prevail on a claim involving choices between alternative courses of treatment, a prisoner must show that the chosen course of treatment ‘was medically unacceptable under the circumstances,’ and was chosen ‘in conscious disregard of an excessive risk’ to the prisoner’s health.” *Toguchi*, 391 F.3d at 1058 (alteration omitted) (quoting *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996)). Stated another way, a plaintiff must prove that medical providers chose one treatment over the plaintiff’s preferred treatment “even though they knew [the plaintiff’s preferred treatment] to be medically necessary based on [the plaintiff’s] records and prevailing medical standards.” *Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1117 (N.D. Cal. 2015). To violate the Eighth Amendment, the choice of treatment must have been “so inadequate that it demonstrated an absence of professional judgment, that is, that no minimally competent professional would have so responded under those circumstances.” *Collignon v. Milwaukee Cnty.*, 163 F.3d 982, 989 (7th Cir. 1998); *see also Lamb v. Norwood*, 895 F.3d 756, 760 (10th Cir. 2018) (“[P]rison officials do not act with deliberate indifference when they provide medical treatment even if it is subpar or different from what the inmate wants.”).

The Eighth Amendment requires that prison medical providers exercise informed medical judgment. Thus, if a medical treatment is denied because of a blanket governmental policy—rather than an individualized determination of the appropriate treatment for the particular inmate—a factfinder may infer deliberate indifference. *See Rosati v. Igbinoso*, 791 F.3d 1037, 1039–40 (9th Cir. 2015) (“Rosati plausibly alleges that prison officials were aware of her medical history and need for treatment, but denied the

surgery because of a blanket policy against [sex reassignment surgery].”); *Allard v. Gomez*, 9 F. App’x 793, 795 (9th Cir. 2001) (unpublished) (“[T]here are at least triable issues as to whether hormone therapy was denied … on the basis of an individualized medical evaluation or as a result of a blanket rule, the application of which constituted deliberate indifference to [plaintiff’s] medical needs.”).

However, if providers make an individualized assessment and choose a treatment that, in their informed judgment, is medically appropriate, a plaintiff generally cannot establish deliberate indifference. *See Lamb*, 895 F.3d at 760 (“[The plaintiff] is obtaining psychological counseling and hormone treatments, including estrogen and testosterone-blocking medication. Though prison officials have not authorized surgery or the hormone dosages that [the plaintiff] wants, the existing treatment precludes a reasonable fact-finder from inferring deliberate indifference.”); *Supre v. Ricketts*, 792 F.2d 958, 963 (10th Cir. 1986) (“While the medical community may disagree among themselves as to the best form of treatment for plaintiff’s condition, the Department of Corrections made an informed judgment as to the appropriate form of treatment and did not deliberately ignore plaintiff’s medical needs.”). In such a case, a plaintiff must plausibly allege that the defendants intentionally interfered with appropriate medical diagnosis and treatment—for example, by “creat[ing] a pretextual report to support denial” of a requested treatment. *Norsworthy*, 87 F. Supp. 3d at 1117.

A plaintiff cannot simply restate these standards of law in a complaint. Instead, a plaintiff must provide specific facts supporting the elements of each claim and must allege facts showing a causal link between each defendant and Plaintiff’s injury or damage.

Alleging “the mere possibility of misconduct” is not enough. *Iqbal*, 556 U.S. at 679.

Plaintiff’s Eighth Amendment claims are implausible. The Complaint includes no specific facts about Plaintiff’s medical treatment, such as a description of the “treatment plan” that was developed or the names of individuals who were personally involved in treating Plaintiff. Though Plaintiff was seen by Defendant Reese on at least one occasion, *see* Dkt. 1-1 at 4 (copies of grievance forms), Plaintiff provides no details about that appointment. Further, the Complaint does not describe how—and when—each Defendant was “made aware” of the problem. Thus, Plaintiff’s allegations do not support a reasonable inference that any Defendant subjectively knew of a substantial risk to Plaintiff’s health yet deliberately disregarded that risk. *See Toguchi*, 391 F.3d at 1057; *Gibson*, 290 F.3d at 1187.

#### ***B. State Law Claims***

In addition to § 1983 claims, Plaintiff purports to assert state law claims, though Plaintiff does not identify any such claims. *Compl.* at 1. The Court presumes Plaintiff is bringing claims of negligence or medical malpractice.

The elements of a negligence claim under Idaho law are “(1) a duty, recognized by law, requiring a defendant to conform to a certain standard of conduct; (2) a breach of that duty; (3) a causal connection between the defendant’s conduct and the resulting injuries; and (4) actual loss or damage.” *McDevitt v. Sportsman’s Warehouse, Inc.*, 255 P.3d 1166, 1169 (Idaho 2011). A person breaches a duty when that person acts in a manner in which a reasonable person would not. *See Steed v. Grand Teton Council of the Boy Scouts of Am., Inc.*, 172 P.3d 1123, 1129 (Idaho 2007) (describing the reasonable person standard as a

“negligence standard of care”)).

Additionally, to succeed on a medical malpractice claim, the plaintiff must “affirmatively prove by direct expert testimony and by a preponderance of all the competent evidence” that the defendant medical provider “negligently failed to meet the applicable standard of health care practice of the community in which such care allegedly was or should have been provided.” Idaho Code § 6-1012. A plaintiff asserting a medical malpractice claim also must first submit the claim to a prelitigation screening panel in accordance with Idaho Code § 6-1001.

Plaintiff’s state law claims are implausible for the same reason as his federal claims—his allegations are simply too vague to state a colorable claim of negligence or medical malpractice. Moreover, because the Complaint fails to state a federal claim upon which relief may be granted, the Court would decline to exercise supplemental jurisdiction over Plaintiff’s state law claims in any event. *See* 28 U.S.C. § 1337(c). If Plaintiff is allowed to proceed on a federal claim in an amended complaint, and if the amended complaint states a plausible state law claim, the Court will reconsider the issue of supplemental jurisdiction.

## **5. Standards for Amended Complaint**

If Plaintiff chooses to amend the Complaint, Plaintiff must demonstrate how the actions complained of have resulted in a deprivation of Plaintiff’s constitutional rights. *See Ellis v. Cassidy*, 625 F.2d 227, 229 (9th Cir. 1980), *abrogated on other grounds by Kay v. Ehler*, 499 U.S. 432 (1991). Plaintiff must also allege a sufficient causal connection between each defendant’s actions and the claimed deprivation. *Taylor*, 880 F.2d at 1045;

*Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). “Vague and conclusory allegations of official participation in civil rights violations are not sufficient to withstand a motion to dismiss” or to survive screening under 28 U.S.C. §§ 1915 and 1915A. *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982); *see also Iqbal*, 556 U.S. at 678 (“Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement.” (internal quotation marks and alteration omitted)).

Rather, for each cause of action against each defendant, Plaintiff must state the following: (1) the name of the person or entity that caused the alleged deprivation of Plaintiff’s constitutional rights; (2) facts showing the defendant is a state actor (such as state employment or a state contract) or a private entity performing a state function; (3) the dates on which the conduct of the defendant allegedly took place; (4) the specific conduct or action Plaintiff alleges is unconstitutional; (5) the particular federal constitutional provision (or state law provision) Plaintiff alleges has been violated; (6) facts alleging that the elements of the violation are met—for example, Plaintiff must allege facts satisfying the elements of an Eighth Amendment claim; (7) the injury or damages Plaintiff personally suffered; and (8) the particular type of relief Plaintiff is seeking from each defendant.

Further, any amended complaint must contain all of Plaintiff’s allegations in a single pleading and cannot rely upon, attach, or incorporate by reference other pleadings or documents. Dist. Idaho Loc. Civ. R. 15.1 (“Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must reproduce the entire pleading as amended. The proposed amended pleading must be submitted at the time of filing a motion to amend.”); *see also Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997) (“[An]

amended complaint supersedes the original, the latter being treated thereafter as non-existent.”), *overruled in part on other grounds by Lacey v. Maricopa County*, 693 F.3d 896, (9th Cir. 2012) (en banc); *Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1990) (holding that the district court erred by entering judgment against a party named in the initial complaint, but not in the amended complaint).

Plaintiff must set forth each different factual allegation in a separate numbered paragraph. The amended complaint must be legibly written or typed in its entirety, and it should be clearly designated as an “Amended Complaint.” Plaintiff’s name and address should be clearly printed at the top left corner of the first page of each document filed with the Court.

## **ORDER**

### **IT IS ORDERED:**

1. The Complaint fails to state a claim upon which relief may be granted. Plaintiff has 60 days within which to file an amended complaint as described above. If Plaintiff files an amended complaint, Plaintiff must also file a “Motion to Review the Amended Complaint.”
2. If Plaintiff does not amend within 60 days, or if the amendment does not comply with Rule 8, this case may be dismissed without further notice. *See Knapp v. Hogan*, 738 F.3d 1106, 1110 (9th Cir. 2013) (“When a litigant knowingly and repeatedly refuses to conform his pleadings to the requirements of the Federal Rules, it is reasonable to conclude that the litigant simply *cannot* state a claim.”). Alternatively, Plaintiff may file a

Notice of Voluntary Dismissal if Plaintiff no longer intends to pursue this case.<sup>2</sup>

3. Plaintiff's request for appointment of counsel (contained in the Complaint) is DENIED without prejudice. Plaintiff may renew the request for counsel in an amended complaint.



DATED: April 12, 2021



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David C. Nye  
Chief U.S. District Court Judge

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<sup>2</sup> A voluntary dismissal under Federal Rule of Civil Procedure 41(a)(1) is not a dismissal for frivolity, for maliciousness, or for failure to state a claim upon which relief may be granted and, therefore, does not count as a "strike" under 28 U.S.C. § 1915(g).