

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

LEON-MICHAEL: THOLSON,

Plaintiff,

vs.

RONALD TAYLOR, et al.,

Defendants.

Case No. 3:15-cv-00033-SLG

**ORDER DENYING MOTION FOR RECONSIDERATION**

On February 27, 2015, Leon-Michael: Tholson, representing himself, filed a Prisoner's Civil Rights Complaint under 42 U.S.C. § 1983, with 66 papers attached.<sup>1</sup> The Court reviewed the Complaint, as required by federal law,<sup>2</sup> explained the deficiencies and dismissed, and permitted Mr. Tholson to "file an Amended Complaint *solely on the form provided* by the Court, with *no attachments*."

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<sup>1</sup> Docket 1. Mr. Tholson has also filed a "Supplemental Complaint Class Action," an Application to Waive the Filing Fee under 28 U.S.C. § 1915, an unsigned Declaration claiming to be in imminent danger of physical injury (with 29 papers attached), a Motion for Appointment of Counsel, and a Motion for Class Certification (with 19 papers attached). Dockets 3-7.

<sup>2</sup> 28 U.S.C. § 1915A(b); see *also* 28 U.S.C. § 1915(e)(2)(B) (required review of in forma pauperis complaints); 42 U.S.C. § 1997e(c)(1) ("The court shall on its own motion . . . dismiss any action brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner . . . if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief."); *O'Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008) ("Because these statutes impose a mandatory duty, we construe a district court's termination of an in forma pauperis complaint during the screening process for a reason enumerated in § 1915A, § 1915(e)(2)(B), or § 1997e(c) as a dismissal pursuant to the applicable section.").

He must state facts against only a *single defendant* in *each claim* for relief. He must make no legal arguments.”<sup>3</sup>

Mr. Tholson has moved for reconsideration as to the dismissal of claims of deliberate indifference to his serious medical needs, and as to the Court’s requirements for filing the Amended Complaint.<sup>4</sup>

1. A violation of the right to be free from cruel and unusual punishment, involving medical care, requires that a defendant was deliberately (in a subjective sense) indifferent to a plaintiff’s serious medical needs.

To state a claim for violations involving medical care, a prisoner must show that a defendant has been deliberately indifferent to his serious medical needs.<sup>5</sup>

The Court explained that a difference of medical opinion regarding medication is not enough to establish a Constitutional violation.<sup>6</sup> In addition, the Ninth Circuit, following the United States Supreme Court, explains as follows:

To establish an Eighth Amendment violation, a plaintiff must satisfy both an objective standard—that the deprivation was serious enough

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<sup>3</sup> Docket 9 at 14.

<sup>4</sup> Docket 10.

<sup>5</sup> *Estelle v. Gamble*, 429 U.S. 97, 105 (1976) (“Regardless of how evidenced, deliberate indifference to a prisoner’s serious illness or injury states a cause of action under § 1983.”).

<sup>6</sup> Docket 10 at 3-4; *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir.), *cert. denied*, 519 U.S. 1029 (1996) (citing *Estelle*, 429 U.S. at 107-08); *Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004) (“The Toguchis argue that Seroquel is superior to Triafon, and therefore should not have been discontinued by Dr. Chung. However, a mere ‘difference of medical opinion ... [is] insufficient, as a matter of law, to establish deliberate indifference.’”) (quoting *Jackson*, *supra*).

to constitute cruel and unusual punishment—and a subjective standard—deliberate indifference.

To meet the *objective standard*, the denial of a plaintiff’s serious medical need must result in the “unnecessary and wanton infliction of pain.”

The *subjective standard* of deliberate indifference requires “more than ordinary lack of due care for the prisoner’s interests or safety.” . . . The state of mind for deliberate indifference is subjective recklessness.<sup>7</sup>

Nothing Mr. Tholson stated in his Motion for Reconsideration changes the fact that, under the law of the Supreme Court and the Ninth Circuit, a complaint alleging constitutional violations of medical care must include allegations that state officials had the *subjective recklessness* required to establish deliberate indifference to his serious medical needs.<sup>8</sup>

2. A complaint must comply with Rule 8 of the Federal Rules of Civil Procedure.

Mr. Tholson also wishes to submit attachments to his Amended Complaint.<sup>9</sup>

As he has been told, however, a complaint and a brief are separate types of

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<sup>7</sup> *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012) (quoting *Estelle*, 429 U.S. at 104 and *Farmer v. Brennan*, 511 U.S. 825, 835 (1994)) (internal citation omitted) (emphasis added), *overruled on other grounds*, *Peralta v. Dillard*, 744 F.3d 1076, 1083 (9th Cir. 2014) (en banc)).

<sup>8</sup> Decisions of other federal district courts or circuit courts from other jurisdictions, cited by Mr. Tholson (Docket 10 at 3-4, 6), are not binding on this Court. This Court must follow *current* United States Supreme Court law and Ninth Circuit law. See *Black’s Law Dictionary* (10th ed. 2014) (defining “stare decisis” (also known as “precedent”), in this context, as “[t]he doctrine that a court must strictly follow the decisions handed down by higher courts within the same jurisdiction.”); see also, e.g., *Day v. Apoliona*, 496 F.3d 1027, 1031 (9th Cir. 2007) (Until the Supreme Court “change[s] the law . . . [the Ninth Circuit] (and the district court) are bound by [the Ninth Circuit’s] earlier precedent.”).

<sup>9</sup> Docket 10 at 8.

documents, and the case must begin with a complaint.<sup>10</sup> Rule 8(a) of the Federal Rules of Civil Procedure provides as follows:

A pleading that states a claim for relief must contain:

- (1)** a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
- (2)** a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3)** a demand for the relief sought, which may include relief in the alternative or different types of relief.<sup>11</sup>

Documents which are appropriately attached to complaints are those such as a final decision of the Social Security Commissioner, stating that an applicant for benefits has the right to file a federal court case within 60 days of the decision.<sup>12</sup> Mr. Tholson, instead of providing "a short and plain statement of the claim showing that [he] is entitled to relief,"<sup>13</sup> has attached 66 documents, as might be provided with a brief or memorandum of law in support of a dispositive motion, but not with a complaint.<sup>14</sup>

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<sup>10</sup> See, e.g., Docket 9 at 13-14; *Tholson v. Schmidt, et al.*, 3:14-cv-00216-SLG, Docket 9 at 2.

<sup>11</sup> Fed. R. Civ. P. 8(a) (emphasis in original); see also *Black's Law Dictionary* (A complaint is the "initial pleading that starts a civil action and states the basis for the court's jurisdiction, the basis for the plaintiff's claim, and the demand for relief.").

<sup>12</sup> See this Court's form PS06, Social Security Complaint, at 2 ("Plaintiff has attached a true and correct copy of the final decision of the Commissioner of Social Security.").

<sup>13</sup> Fed. R. Civ. P. 8(a)(2).

<sup>14</sup> See *Black's Law Dictionary* (A brief is a "written statement setting out the legal contentions of a party in litigation . . . consisting of legal and factual arguments and the

As has been explained to Mr. Tholson, once he files a complaint that complies with Rule 8, and states federal claims for relief against appropriate defendants, he may be given an opportunity to file a brief on the issues in which he may more thoroughly argue his case with supporting documentation.<sup>15</sup>

**IT IS THEREFORE ORDERED:**

1. The Motion for Reconsideration, at Docket 10, is DENIED.
2. Mr. Tholson must comply with the Court's Order Permitting Amended Complaint and Requiring a Response to Order to Show Cause, at Docket 9, on or before **May 8, 2015**.
3. The Court will not address the Application to Proceed without Prepayment of Fees, at Docket 3, and will take no further action in this case, until Mr. Tholson fully complies with the Order at Docket 9. If Mr. Tholson fails to comply on or before May 8, 2015, this case will be dismissed without further notice

DATED at Anchorage, Alaska, this 28<sup>th</sup> day of April, 2015.

/s/ SHARON L. GLEASON  
United States District Judge

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authorities in support of them."); see also, e.g., Fed. R. Civ. P. 56 (motion for summary judgment), and Fed. R. Civ. P. 12(b) (motion to dismiss).

<sup>15</sup> The Court's Scheduling Order sets the briefing and pretrial schedule.