UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DAVID SINOHUIZ, JR., Plaintiff, v. LOS ANGELES COUNTY JAIL AND LOS ANGELES COUNTY MEDICAL CENTER, Defendants.	No. CV-17-0351-DOC (AS) **ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND**

INTRODUCTION

On January 17, 2017, David Sinohuiz, Jr. ("Plaintiff"), an inmate at the Los Angeles County Jail proceeding *pro se*, filed a complaint pursuant to 42 U.S.C. § 1983 ("Complaint"). (Docket Entry No. 1). The Court has screened the Complaint as prescribed by 28 U.S.C. § 1915A(b) and § 1915(e)(2)(B). For the reasons discussed below, the Complaint is DISMISSED with leave to amend.[1]

[1] A Magistrate Judge may dismiss a complaint with leave to amend without the approval of a District Judge. See McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991).

ALLEGATIONS OF THE COMPLAINT

The Complaint, construed liberally, appears to allege claims for failure to protect, deliberate indifference to serious medical needs, negligence, and denial of access to a law library. (Complaint at 3-4). The Complaint names the Los Angeles County Jail ("County Jail") and the Los Angeles County Medical Center ("County Medical Center") as defendants. (Id. at 1). Although the Complaint does not name a "Doe" defendant, Plaintiff alleges that he is suing the County Medical Center in its individual and official capacity and notes that the Medical Center's "position and title, if any," is "surgeon that performed surgery on me." (Id. at 3). Thus, it appears that Plaintiff may have intended to sue both the County Medical Center and the surgeon who performed Plaintiff's surgery.

The Complaint seeks damages and the injunctive relief of surgery to repair injury to Plaintiff's back, surgery to remove the glove left inside Plaintiff during a prior surgery, and psychiatric treatment. (Id. at 6).

The Complaint alleges the following facts in support of the claims asserted: First, Plaintiff alleges that the County Jail failed to protect him "with gross negligence while under the care of Los Angeles County." (Id. at 3). Plaintiff claims that the County Jail violated his right to be protected while under its care "[b]y not properly supervising [Plaintiff's housing unit [and] not performing proper contraban[d] s[ea]rches," which "led to a savage attack on

[Plaintiff]" and resulted in Plaintiff suffering broken ribs, a spine injury, a collapsed lung, and mental anguish. (Id. at 5).

Second, Plaintiff alleges that the County Medical Center and the surgeon who performed Plaintiff's surgery committed negligence. (Id. at 3, 6). The surgeon misplaced a finger of her glove and left it inside Plaintiff during surgery. (Id. at 6).

Third, Plaintiff alleges that the County Jail denied Plaintiff access to the law library in violation of his right to due process. (Id. at 3). Plaintiff made multiple attempts to gain access to the law library, but was denied each time. (Id. at 7).

Fourth, Plaintiff alleges that the County Jail denied Plaintiff proper medical care for his injuries of broken ribs, spinal injury, collapsed lung, and metal stress/post-traumatic stress disorder. (Id. at 4, 8).

STANDARD OF REVIEW

Congress mandates that district courts initially screen civil complaints filed by prisoners seeking redress from governmental entities or employees and plaintiffs proceeding in forma pauperis. 28 U.S.C. §§ 1915A(b), 1915(e)(2)(B). A court may dismiss such a complaint, or any portion thereof, before service of process, if the court concludes that the complaint: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b)(1)-(2), 1915(e)(2)(B); see also Lopez v. Smith, 203 F.3d 1122, 1126-27 & n.7 (9th Cir. 2000) (en banc).

To state a claim for which relief may be granted, a complaint must contain "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). In addition, a court must interpret a *pro se* complaint liberally and construe all material allegations of fact in the light most favorable to the plaintiff. See Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) ("[A] complaint [filed by a *pro se* prisoner] 'must be held to less stringent standards than formal pleadings drafted by lawyers.'") (quoting Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam)). However, a court does not have to accept as true mere legal conclusions. See Iqbal, 556 U.S. at 678 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."). Furthermore, in giving liberal interpretation to a *pro se* complaint, a court may not supply essential elements of a claim that were not initially pled. Pena v. Gardner, 976 F.2d 469, 471–72 (9th Cir. 1992).

DISCUSSION

A. The Complaint Fails To Satisfy Federal Rule Of Civil Procedure 8

Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain "'a short and plain statement of the claim showing

that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). A pleading can violate Rule 8 in "multiple ways." Knapp v. Hogan, 738 F.3d 1106, 1109 (9th Cir. 2013). "One well-known type of violation is when a pleading says too little." Id. (citation omitted).

Here, each of the claims are supported by, at most, a few conclusory sentences or clauses. For example, the only facts alleged in support of Plaintiff's failure to protect claim are the conclusory statements that the County Jail failed properly to supervise Plaintiff's housing unit and to conduct contraband searches and that these failures caused Plaintiff to be attacked. (Complaint at 5). Similarly, Plaintiff's inadequate medical care claim alleges in conclusory form only that the County denied Plaintiff proper medical care for his injuries.

The Complaint's sparse, vague, and conclusory allegations say "far too little," Knapp, 738 F.3d at 1109, and are not sufficient to provide Defendants with fair notice of the claims against them in a short, clear and concise statement. Cf. Twombly, 550 U.S. at 555. Accordingly, the Complaint must be DISMISSED with leave to amend for failure to comply with Rule 8.

B. The County Jail and Medical Center Are Not "Persons" Subject to Suit Under § 1983

Plaintiff alleges claims for failure to protect, denial of law library access, and inadequate medical care under 42 U.S.C. section 1983. (Complaint at 1, 3-4). Section 1983 applies to the actions of "persons" acting under color of state law. While a local governmental unit or municipality can be sued as a "person" under section 1983, Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 (1978), municipal departments and sub-units of local governments are generally not considered "persons" under the act. See Fischer v. Cahill, 474 F.2d 991, 992 (3d Cir. 1992) (a prison's medical department is not a "person" within the meaning of section 1983); Vance v. County of Santa Clara, 928 F. Supp. 993, 995-96 (N.D. Cal. 1996) ("Naming a municipal department as a defendant is not an appropriate means of pleading a § 1983 action against a municipality"; Santa Clara Department of Corrections is not a proper defendant under section 1983); Villatoro v. Brown, No. 11-CV-0971-GBC (PC), 2012 WL 3288181, *3 (E.D. Cal. Aug. 10, 2012) (medical departments at prisons are not "persons" subject to suit under § 1983).

Plaintiff alleges his section 1983 claims against the County Jail and County Medical Center. (Complaint at 3-4). These units of Los Angeles County, however, are improper defendants under section 1983. Accordingly, Plaintiff's section 1983 claims for failure to protect, denial of access to a law library, and inadequate medical care against these named defendants must be DISMISSED.

Even if Plaintiff had named the County of Los Angeles as a defendant in his Complaint, these municipal claims would still fail. A local government entity "may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom . . . inflicts the injury that the government as an entity is responsible under § 1983." Monell v. Dep't of Social Serv. Of New York, 436 U.S. 658, 694 (1978). A plaintiff must establish that "the action that is alleged to be unconstitutional implements or executes a policy . . . ordinance, regulation, or decision officially adopted and promulgated by "the municipality, or that the action was "visited pursuant to a governmental 'custom.'" Id. at 690-91. In other words, a plaintiff must show that "deliberate action[,] attributable to the municipality itself[,] is the 'moving force' behind the plaintiff's deprivation of federal rights." Board of County Comm'rs of Bryan County v. Brown, 520 U.S. 397, 400 (1997).[2]

[2] Plaintiff has not identified any policy, ordinance, or custom that led to the deprivation of Plaintiff's constitutional rights. The Complaint merely alleges that (1) the County Jail failed to protect Plaintiff, supervise his housing unit, and perform proper contraband searches; (2) Plaintiff's surgeon and the County Medical Center were negligent; (3) the County Jail on multiple occasions denied Plaintiff access to the law library; and (4) the County Jail denied Plaintiff proper medical care. These allegations do not state a viable Monell claim against the county. Isolated incidents do not suffice to state a claim for an unconstitutional policy or practice. Cf. Thompson v. City of Los Angeles, 885 F.2d 1439, 1444 (9th Cir. 1989) ("proof of random acts or isolated events are insufficient to establish a custom" within the meaning of Monell), overruled on other grounds by Bull v. City and Cnty. of San Francisco, 595 F.3d 964 (9th Cir. 2010).

C. The Complaint Fails To State a Claim For Failure To Protect

The Complaint alleges that the County Jail failed to protect him. (Complaint at 3, 5). The Complaint does not allege whether Plaintiff was a pre-trial detainee or prisoner at the time of the events giving rise to his claim. A pretrial detainee's failure to protect claim arises under the Due Process Clause of the Fourteenth Amendment, rather than the Eighth Amendment's Cruel and Unusual Punishment Clause. Kingsley v. Hendrickson, 135 S. Ct. 2466, 2475 (2015); Castro v. County of Los Angeles, 833 F.3d 1060, 1169-70 (9th Cir. 2016) (en banc), cert. denied, No. 16-655, 2017 WL 276190 (Jan. 23, 2017). Under either standard, however, the Complaint fails to state a claim upon which relief may be granted.

The elements of a pretrial detainee's Fourteenth Amendment failure to protect claim against an individual officer are

> (1) The defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (2) Those conditions put the plaintiff at substantial risk of suffering serious harm; (3) The defendant did not take reasonable available measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant's conduct obvious; and (4) By not taking such measures, the defendant caused the plaintiff's injuries.

Castro, 833 F.3d at 1171. With respect to the third element, the defendant's conduct must be objectively unreasonable, a test that

will necessarily "turn[ ] on the 'facts and circumstances of each particular case.'" Id. (quoting Kingsley, 135 S. Ct. at 2473).

To support an Eighth Amendment failure to protect claim, a plaintiff first must "'objectively show that he was deprived of something "sufficiently serious".'" Lemire v. Cal. Dep't of Corrections & Rehabilitation, 726 F.3d 1062, 1074 (9th Cir. 2013(quoting Foster v. Runnels, 554 F.3d 807, 812 (9th Cir. 2009); Farmer, 511 U.S. at 834). "'A deprivation is sufficiently serious when the prison official's act or omission results "in the denial of the minimal civilized measure of life's necessities."'" Id. (quoting Foster, 554 F.3d at 812; Farmer, 511 U.S. at 834). A plaintiff also must allege that the prison official acted with deliberate indifference to the plaintiff's safety. Farmer, 511 U.S. at 834; Lemire v. Cal. Dep't of Corrections & Rehabilitation, 726 F.3d 1062, 1074 (9th Cir. 2013). The official must know of, and disregard, an excessive risk to inmate health or safety – i.e., must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists and also draw the inference. Farmer, 511 U.S. at 837. However, "[t]he official need not have intended any harm to befall the inmate; 'it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.'" Lemire, 726 F.3d at 1074 (quoting Farmer, 511 U.S. at 837). A plaintiff in addition must plausibly allege that the official's actions were an actual and proximate cause of the plaintiff's injuries. Id. (citation omitted).

Plaintiff alleges only that the County Jail failed to protect him by not properly supervising his housing unit and not performing

proper contraband searches. Plaintiff asserts that these omissions caused Plaintiff to be attacked. (Complaint at 5).

Plaintiff has failed to state a failure to protect claim under the Fourteenth Amendment of the Eighth Amendment. If Plaintiff was a pretrial detainee at the time of the complained of events, Plaintiff has not alleged facts establishing that any jail official made an intentional decision regarding supervision of Plaintiff's housing unit or the manner in which contraband searches would be conducted. Cf. Castro, 833 F.3d at 1171. Plaintiff has also failed to allege that the conditions resulting from that decision put him at substantial risk of serious harm. Cf. id. Nor has Plaintiff alleged that any jail official failed to take reasonable measures to abate the risk or facts suggesting that a reasonable officer would have appreciated the high degree of risk. Cf. id. Moreover, Plaintiff has not alleged facts establishing causation. Cf. id. If Plaintiff was a prisoner at the time of the relevant events, Plaintiff has alleged no facts plausibly suggesting that any jail official subjectively knew of, and disregarded, an excessive risk to Plaintiff's health or safety by refusing properly to supervise Plaintiff's housing or conduct contraband searches. Nor has Plaintiff alleged the necessary facts to establish actual and proximate causation. Accordingly, Plaintiff's failure to protect claim must be DISMISSED with leave to amend.

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D. The Complaint Fails to Allege Compliance with the CTCA's Presentation Requirement

The Complaint alleges a state law tort claim for "gross negligence" against the County Medical Center and unnamed surgeon who operated on Plaintiff. (Complaint at 3, 6). However, under the California Tort Claims Act ("CTCA"), a plaintiff may not bring an action for damages against a public entity or employee unless he first presents a written claim to the local entity within six months of the accrual of the action. See Mabe v. San Bernardino County, 237 F.3d 1101, 1111 (9th Cir. 2001) (CTCA requires the "timely presentation of a written claim and the rejection of the claim in whole or in part" as a condition precedent to filing suit); see also Cal. Gov't Code § 945.4 ("[N]o suit for money or damages may be brought against a [local] public entity . . . until a written claim therefor has been presented to the public entity . . . ."). Furthermore, a plaintiff must affirmatively allege or demonstrate compliance with the CTCA's claim presentation requirement, Mangold v. Cal. Pub. Utils. Comm'n, 67 F.3d 1470, 1477 (9th Cir. 1995) ("Where compliance with the [California] Tort Claims Act is required, the plaintiff must allege compliance or circumstances excusing compliance, or the complaint is subject to general demurrer.") (internal quotation marks omitted), or allege facts showing the applicability of a recognized exception or excuse for noncompliance, State v. Superior Court (Bodde), 32 Cal. 4th 1234, 1239 (2004).

The Complaint does not allege that Plaintiff presented his state law tort claims to the county or otherwise complied with the CTCA.

Accordingly, Plaintiff's state law claim for negligence must be DISMISSED with leave to amend.

E. The Complaint Fails to State a Claim for Denial of Law Library Access

The Complaint alleges that the County Jail denied Plaintiff access to a law library on multiple occasions. (Complaint at 3, 7). Access to a law library or to legal assistance are not ends in themselves. They are only relevant if pertinent to Plaintiff's right to have a "reasonably adequate opportunity to present claimed violations of constitutional rights to the courts," i.e., have access to the courts. Lewis v. Casey, 518 U.S. 343, 350-51 (1996) (quoting Bounds v. Smith, 430 U.S. 817, 825 (1977)). In other words, the Constitution does not require that inmates be able to conduct generalized research, but only that they be able to "present" their grievances to the courts. Lewis, 518 U.S. at 359; see also Cornett v. Donovan, 51 F.3d 894, 898 (9th Cir. 1995) (right of access to courts requires a state to provide a law library or legal assistance only during the pleading stage of a habeas or civil rights action).

To establish a violation of the right of access to the courts, an inmate must establish that he or she has suffered an actual injury, a jurisdictional requirement that flows from the standing doctrine and may not be waived. Lewis, 518 U.S. at 349; Madrid v. Gomez, 190 F.3d 990, 996 (9th Cir. 1999). An "actual injury" is "actual prejudice with respect to contemplated or existing

litigation, such as the inability to meet a filing deadline or to present a claim." Lewis, 518 U.S. at 348.

Plaintiff has not alleged facts establishing that the denial of access to a law library infringed his right to present any contemplated or existing legal claims. Plaintiff therefore has not alleged the requisite "actual injury." Accordingly, Plaintiff's denial of library access claim must be DISMISSED with leave to amend.

F. The Complaint Fails To State a Claim For Deliberate Indifference To Serious Medical Needs

The Complaint alleges that the County Jail denied Plaintiff adequate medical care for treatment of his injuries. The Eighth Amendment's proscription against cruel and unusual punishment is violated when officials remain deliberately indifferent to the serious medical needs of convicted prisoners.[3] See Estelle v. Gamble, 429 U.S. 97, 104 (1976).

A defendant is liable for the delay or denial of an inmate's medical care only when deliberately indifferent to known serious

[3] The rights of pretrial detainees to receive medical treatment arise under the Due Process Clause of the Fourteenth Amendment. See Revere v. Massachusetts General Hosp., 463 U.S. 239, 244 (1983). However, "the eighth amendment guarantees provide a minimum standard of care for determining [a prisoner's] rights as a pretrial detainee, including [the prisoner's] rights ... to medical care." Jones v. Johnson, 781 F.2d 769, 771 (9th Cir. 1986), overruled on other grounds by Peralta v. Dillard, 744 F.3d 1076 (9th Cir. 2014).

medical needs. Farmer v. Brennan, 511 U.S. 825, 834 (1994); see also Estelle v. Gamble, 429 U.S. 97, 104 (1976). A plaintiff must show that the deprivation suffered was "objectively, sufficiently serious" and that prison officials were deliberately indifferent to his safety in allowing the deprivation to take place. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006). A plaintiff can satisfy the objective component of the deliberate indifference standard by demonstrating that a failure to treat the plaintiff's condition could result in further significant injury or the unnecessary and wanton infliction of pain. Colwell v. Bannister, 763 F.3d 1060, 1066 (9th Cir. 2014) (citation omitted); accord McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997); see also Lopez v. Smith, 203 F.3d 1122, 1131 (9th Cir. 2000) (en banc) (examples of "serious medical needs" include "a medical condition that significantly affects an individual's daily activities" and "the existence of chronic and substantial pain") (citation and internal quotation marks omitted).

A prison official acts with deliberate indifference, thereby satisfying the subjective component of the standard, "only if the [official] knows of and disregards an excessive risk to inmate health and safety." Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004); see also Farmer, 511 U.S. at 837 (A jail official must "both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference."). "[A]n official's failure to alleviate a significant risk that he

should have perceived but did not, while no cause for commendation, cannot . . . be condemned as the infliction of punishment." Id. at 838; see also Estelle, 429 U.S. at 105-06 (inadequate treatment due to mistake or negligence does not amount to a constitutional violation). The defendant must have "purposefully ignore[d] or fail[ed] to respond to a prisoner's pain or possible medical needs in order for deliberate indifference to be established." May v. Baldwin, 109 F.3d 557, 566 (9th Cir. 1997) (internal quotation marks omitted). "[M]ere malpractice, or even gross negligence," in the provision of medical care does not establish a constitutional violation. Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990); see also Estelle, 429 U.S. at 105-06 ("[A] complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment.").

Plaintiff alleges only that the County Jail denied him proper care for his injures of broken ribs, spinal injury, collapsed lung, and mental stress/post-traumatic stress disorder. While Plaintiff's physical injuries appear to satisfy the objective component of the deliberate indifference standard, Plaintiff has not alleged non-conclusory facts that satisfy the subjective component.

Plaintiff's allegation that the County Jail denied him proper care for his injures does not establish that any prison official acted with the requisite deliberate indifference. First, the conclusory statement that a prison official delivered improper

medical care is not sufficient to state a plausible claim absent factual support. Cf. Iqbal, 556 U.S. at 678 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.").

Second, improper medical care alone does not rise to the level of a constitutional violation. To the contrary, even gross negligence does not offend the Constitution. Wood, 900 F.2d at 1334; see also Estelle, 429 U.S. at 105-06. Rather, Plaintiff must allege facts demonstrating that an official knew of and disregarded an excessive risk to his health and safety. Cf. Toguchi, 391 F.3d at 1057; see also Farmer, 511 U.S. at 837. The defendant must have "purposefully ignore[d] or fail[ed] to respond to a prisoner's pain or possible medical needs in order for deliberate indifference to be established." May v. Baldwin, 109 F.3d 557, 566 (9th Cir. 1997) (internal quotation marks omitted).

Plaintiff has not alleged facts that satisfy this stringent standard. Accordingly, Plaintiff's inadequate medical care claim must be DISMISSED with leave to amend.[4]

[4] To the extent Plaintiff also intended to assert a deliberate indifference to serious medical needs claim premised on the surgeon leaving a portion of her glove inside Plaintiff during surgery, this claim likewise fails. Even "gross negligence," such as that alleged by Plaintiff, does not rise to the level of a constitutional violation. Wood, 900 F.2d at 1334; see also Estelle, 429 U.S. at 105-06.

ORDER

For the reasons stated above, Plaintiff's Complaint is DISMISSED with leave to amend. If Plaintiff wishes to further pursue the claims dismissed in this action, he must file a First Amended Complaint no later than **30 days from the date of this Order. The First Amended Complaint must cure the pleading defects discussed above and shall be complete in itself without reference to the original Complaint. See L.R. 15-2 ("Every amended pleading filed as a matter of right or allowed by order of the Court shall be complete including exhibits. The amended pleading shall not refer to the prior, superseding pleading."). This means that Plaintiff must allege and plead any viable claims in the original Complaint again.**

In any amended complaint, Plaintiff should identify the nature of each separate legal claim, identify the defendant(s) against whom he brings the claim, and confine his allegations to those operative facts supporting each of his claims. Pursuant to Federal Rule of Civil Procedure 8(a), all that is required is a "short and plain statement of the claim showing that the pleader is entitled to relief." However, Plaintiff is advised that the allegations in the First Amended Complaint should be consistent with the authorities discussed above. In addition, the First Amended Complaint may not include new Defendants or claims not reasonably related to the allegations in the previously filed complaints. Furthermore, Plaintiff shall indicate in what capacity he sues any defendant(s). **Plaintiff is strongly encouraged to utilize the standard civil rights complaint form when filing any amended complaint, a copy of which is attached**.

Plaintiff is explicitly cautioned that failure to timely file a First Amended Complaint, or failure to correct the deficiencies described above, may result in a recommendation that this action, or portions thereof, be dismissed with prejudice for failure to prosecute and/or failure to comply with court orders. See Fed. R. Civ. P. 41(b).

Plaintiff is further advised that if he no longer wishes to pursue this action in its entirety or with respect to particular Defendants or claims, he may voluntarily dismiss all or any part of this action by filing a Notice of Dismissal in accordance with Federal Rule of Civil Procedure 41(a)(1). A form Notice of Dismissal is attached for Plaintiff's convenience.

IT IS SO ORDERED.

Dated: January 27, 2017.

/s/
ALKA SAGAR
United States Magistrate Judge