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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LAWRENCE E. GOMES,
Plaintiff,
v.
DAVID M. MATHIS, M.D., et al.,
Defendants.

Case No. CV 17-7022 SVW (SS)
**MEMORANDUM DECISION AND ORDER
DISMISSING THIRD AMENDED
COMPLAINT WITH LEAVE TO AMEND**

I.

INTRODUCTION

Plaintiff Lawrence E. Gomes ("Plaintiff"), a California state prisoner proceeding pro se, constructively filed a civil rights complaint pursuant to 42 U.S.C. § 1983 on September 20, 2017. ("Complaint," Dkt. No. 1 at 9). The Court dismissed the Complaint and two subsequent iterations of Plaintiff's claims with leave to amend due to pleading defects.¹ (Dkt. Nos. 8 (Order Dismissing

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) ("[T]he dismissal of a complaint

1 Complaint), 12 (Order Dismissing First Amended Complaint), 14
2 (Order Dismissing Second Amended Complaint)). Pending before the
3 Court is Plaintiff's Third Amended Complaint. ("TAC," Dkt. No.
4 15).

5
6 Congress mandates that district courts perform an initial
7 screening of complaints in civil actions where a prisoner seeks
8 redress from a governmental entity or employee. 28 U.S.C.
9 § 1915A(a). This Court may dismiss such a complaint, or any portion
10 thereof, before service of process if it concludes that the
11 complaint (1) is frivolous or malicious, (2) fails to state a claim
12 upon which relief can be granted, or (3) seeks monetary relief from
13 a defendant who is immune from such relief. 28 U.S.C. § 1915A(b) (1-
14 2); see also Lopez v. Smith, 203 F.3d 1122, 1126-27 & n.7 (9th Cir.
15 2000) (en banc). For the reasons stated below, the Court DISMISSES
16 the TAC with leave to amend.

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23 with leave to amend is a non-dispositive matter."). Pursuant to
24 Federal Rule of Civil Procedure 72, a plaintiff who disagrees with
25 a magistrate judge's order dismissing a pleading with leave to
26 amend may file an objection with the district judge. See Bastidas
27 v. Chappell, 791 F.3d 1155, 1162 (9th Cir. 2015); see also Hunt v.
28 Pliler, 384 F.3d 1118, 1124 (9th Cir. 2004) ("District court
review of even these nondispositive matters . . . can be compelled
upon objection of the party against whom the magistrate has
ruled.") (quoting McKeever, 932 F.2d at 798). Here, Plaintiff
has not challenged the dismissal of any of his pleadings before
the district judge.

1 II.

2 ALLEGATIONS OF THE THIRD AMENDED COMPLAINT

3
4 The sole Defendant named in the TAC is Dr. Mariana Lotasztain
5 ("Lotasztain"), a primary care provider at Solano State Prison.
6 (TAC at 3).² Lotasztain is sued in her individual capacity. (Id.).
7

8 The TAC broadly alleges that Lotasztain provided
9 "constitutionally inadequate care for Plaintiff's mental and
10 physical conditions." (Id. at 5). With respect to his mental
11 health, Plaintiff states that he suffers continuing psychological
12 problems after being repeatedly raped by a female correction
13 officer at an Arizona prison in 2008. (Id.). According to
14 Plaintiff, Lotasztain failed "to provide PREA (Prison Rape
15 Elimination Act) follow-up care, testing, outside mental health
16 intervention upon request, and denied to speak to the Federal
17 Bureau for PREA Victims." (Id.).
18

19 In addition to failing to follow the CDCR's PREA regulations,
20 Lotasztain also discontinued the "medication prescribed by other
21 mental health doctors for [Plaintiff's] ongoing mood disorder,
22 post-traumatic stress disorder, sleep disorder, and other mental
23 and emotional injuries." (Id.). In particular, Plaintiff claims
24 that Lotasztain "took [him] off his Gabapentin in 2017 for no
25

26
27 ² The Court will cite to specific pages of the TAC, including its
28 exhibits, as though they formed a single consecutively paginated
document.

1 reason."³ (Id.) (emphasis in original). When Plaintiff informed
2 Lotasztain of his (unspecified) medical need for Gabapentin, "she
3 told [him] to sue her if he didn't like it and that she had no
4 knowledge of [his] PREA assaults." (Id.). However, if Lotasztain
5 had properly reviewed Plaintiff's mental health records, "[she]
6 would have known why and who put [Plaintiff] on Gabapentin[.]"
7 (Id.). Lotasztain's failure to follow unspecified "CCHCS
8 [California Correctional Health Care Services]-2017 PREA DOM
9 [Department Operations Manual] ORDERS[] and delayed treatment"
10 caused Plaintiff "continued mental anguish and some permanent
11 disability." (Id. at 6).

12
13 With respect to his physical health, Plaintiff alleges that
14 Lotasztain "refused to send [him] to a heart cardiologist for his
15 ongoing grave heart condition for [his] pacemaker & Afib, in which
16 [his] ejection fraction is only 35% and now 25%."⁴ (Id.).
17 Furthermore, Lotasztain forced Plaintiff to take his insulin at
18 "5:30 a.m. and no food until 7:00 a.m. in a manner that is not in
19
20

21 ³ "Gabapentin is an anticonvulsant that is used to prevent and
22 control seizures and is also used to relieve nerve pain following
23 shingles. It is also prescribed to treat chronic neuropathic pain
24 or fibromyalgia." Rose v. Berryhill, 256 F. Supp. 3d 1079, 1085
(C.D. Cal. 2017) (internal citations omitted).

25 ⁴ "Ejection fraction is a 'measurement of how much blood the left
26 ventricle pumps out with each contraction.' A normal heart's
27 ejection fraction is between 50%-70%. An ejection fraction between
28 40% and 55% indicates damage. An ejection fraction under 40% may
be evidence of heart failure or cardiomyopathy." Kleveno v.
Colvin, 2013 WL 1628715, at *7 (C.D. Cal. Apr. 16, 2013) (internal
citations omitted).

1 compliance with American Diabetic Association standards," which
2 caused Plaintiff to "shake, fall out, [and] pee on himself." (Id.).

3
4 The TAC's only claim alleges that Lotasztain is liable for
5 deliberate indifference to Plaintiff's serious mental and physical
6 medical needs. (Id.). Plaintiff is seeking \$100,000 in
7 compensatory damages, \$100,000 in punitive damages, and \$100,000
8 "for current and future testing." (Id.).

9
10 **III.**

11 **DISCUSSION**

12
13 The Court must dismiss the TAC pursuant to 28 U.S.C. § 1915A(b)
14 because it violates Federal Rule of Civil Procedure 8. The Court
15 notes that the TAC is Plaintiff's fourth attempt to state a claim,
16 including his original Complaint. While the TAC's allegations show
17 marginal improvement over the prior versions of Plaintiff's claims,
18 it is unclear whether Plaintiff will be able to focus his
19 allegations to state plainly and simply what Lotasztain did or did
20 not do to violate his rights, without irrelevant, extraneous and
21 sometimes incomprehensible allegations or facts.

22
23 The Court is not required to permit even a pro se plaintiff
24 to amend his claims indefinitely. See Lipton v. Pathogenesis
25 Corp., 284 F.3d 1027, 1039 (9th Cir. 2002) (leave to amend is
26 properly denied where amendment would be futile). However, because
27 it is not "absolutely clear that the deficiencies of the complaint
28 could not be cured by amendment," Akhtar v. Mesa, 698 F.3d 1202,

1 1212 (9th Cir. 2012) (citation and internal quotation marks
2 omitted), the Court will give Plaintiff one final opportunity to
3 amend his claims. Plaintiff is expressly cautioned that the
4 failure to correct the deficiencies described below may result in
5 a recommendation that this action be dismissed for failure to state
6 a claim. Ismail v. County of Orange, 917 F. Supp. 2d 1060, 1066
7 (C.D. Cal. 2012) (“[A] district court’s discretion over amendments
8 is especially broad where the court has already given a plaintiff
9 one or more opportunities to amend his complaint.”) (citing DCD
10 Programs, Ltd. v. Leighton, 833 F.2d 183, 186 n.3 (9th Cir. 1987));
11 see also Cafasso, U.S. ex rel. v. General Dynamics C4 Systems,
12 Inc., 637 F.3d 1047, 1058 (9th Cir. 2011) (same).

13
14 Federal Rule of Civil Procedure 8(a)(2) requires that a
15 complaint contain “‘a short and plain statement of the claim
16 showing that the pleader is entitled to relief,’ in order to ‘give
17 the defendant fair notice of what the . . . claim is and the grounds
18 upon which it rests.’” Bell Atlantic Corp. v. Twombly, 550 U.S.
19 544, 555 (2007) (quoting Fed. R. Civ. P. 8(a)). Rule 8 may be
20 violated when a pleading “says too little,” and “when a pleading
21 says too much.” Knapp v. Hogan, 738 F.3d 1106, 1108 (9th Cir.
22 2013) (emphasis in original). However, the courts also have an
23 obligation to give liberal construction to the filings of pro se
24 litigants, especially civil rights claims made by inmates.
25 Blaisdell v. Frappiea, 729 F.3d 1237, 1241 (9th Cir. 2013); see
26 also Erickson v. Pardus, 511 U.S. 89, 94 (2007) (per curiam).

1 To establish a civil rights violation, a plaintiff must show
2 either the defendant's direct, personal participation in the
3 constitutional violation, or some sufficient causal connection
4 between the defendant's conduct and the alleged violation. See
5 Starr v. Baca, 652 F.3d 1202, 1205-06 (9th Cir. 2011). To state a
6 claim for unconstitutional health care services, a prisoner must
7 demonstrate that the defendant was "deliberately indifferent" to
8 his "serious medical needs." Jett v. Penner, 439 F.3d 1091, 1096
9 (9th Cir. 2006). To establish a "serious medical need," the
10 prisoner must show that "failure to treat [the] prisoner's
11 condition could result in further significant injury or the
12 'unnecessary and wanton infliction of pain.'" Jett, 439 F.3d at
13 1096 (citation omitted); see also Morgan v. Morgensen, 465 F.3d
14 1041, 1045 (9th Cir. 2006) (the existence of a serious medical need
15 is determined by an objective standard).

16
17 To establish "deliberate indifference" to such a need, a
18 prisoner must demonstrate: "(a) a purposeful act or failure to
19 respond to a prisoner's pain or possible medical need, and (b) harm
20 caused by the indifference." Jett, 439 F.3d at 1096. Deliberate
21 indifference "may appear when prison officials deny, delay or
22 intentionally interfere with medical treatment, or it may be shown
23 by the way in which prison physicians provide medical care." Id.
24 (citation omitted). Yet, an "inadvertent [or negligent] failure
25 to provide adequate medical care" alone does not state a claim.
26 Id. (citation omitted). The defendant must have been subjectively
27 aware of a serious risk of harm and must have consciously
28 disregarded that risk. See Farmer v. Brennan, 511 U.S. 825, 839

1 (1994). An "isolated exception" to a defendant's "overall
2 treatment" of a prisoner does not state a deliberate indifference
3 claim. Jett, 439 F.3d at 1096.
4

5 The TAC fails to comply with Rule 8 because it still is not
6 clear exactly **which mental or physical conditions** Plaintiff claims
7 constituted a serious medical need, **what Lotasztain consciously**
8 **did or did not do that jeopardized Plaintiff's health**, and what
9 **harm** ensued from Lotasztain's acts or failures to act.
10

11 The Court acknowledges that the attachments to the TAC (if
12 not the TAC itself) plainly reflect that Plaintiff suffers from a
13 wide array of medical conditions. For example, Exhibit 1 is a copy
14 of the first-level response to a grievance filed by Plaintiff in
15 which he requested to have his Gabapentin prescription reinstated,
16 to speak to someone from PREA, and to see another doctor and receive
17 outside intervention. (TAC at 9). The prison's response to the
18 grievance stated in part:
19

20 Your medical records note you have hypertension, heart
21 disease requiring intervention in 2010 and placement of
22 a biventricular automated implantable cardioverter
23 defibrillator (AICD); atrial fibrillation requiring
24 life-long anticoagulation, chronic hepatitis C
25 infection, prostate enlargement, glaucoma, cholesterol
26 issues, history of blood clots in both upper
27 extremities, gunshot wound to the left arm and face,
28 chronic obstructive lung disease, diabetes, gout and a

1 history of chronic kidney disease. Your current
2 medication list notes you are prescribed Cymbalta,
3 Vistaril, Lidocaine patch, morphine sulfate immediate
4 release (IR) and Tylenol. The Disability and Effective
5 Communication System lists you as a DPO.

6
7 (Id.).⁵ Similarly, Exhibit 5 is the first-level response to a
8 grievance Plaintiff filed concerning his request to see a
9 cardiologist. (TAC at 22). That response noted that Plaintiff
10 "suffer[s] from severe congestive heart failure with an ejection
11 fraction of less than 30%." (Id. at 23).

12
13 While Plaintiff alleges that he has an unspecified "grave"
14 mental condition arising from his 2008 sexual assault, the TAC
15 fails to state clearly and concisely what, exactly, he believes
16 that Lotasztain did or did not do to violate his federal
17 constitutional rights with respect to the PREA. Instead, Plaintiff
18 merely refers generally to the CCHCS's PREA policy (attached as
19 Exhibit 3 to the TAC) and states that Lotasztain somehow failed to
20 follow the guidelines. The following passage is simply
21 incomprehensible:

22
23 Mariana Lotasztain MD failed to uphold the CCHCS Volume
24 1 - Governance and Administration Chapter 16, 1.16.2

25
26

⁵ "DPO" is a mobility code used by the CDCR to designate an
27 "intermittent wheelchair user. DPO inmates require a lower bunk
28 and wheelchair accessible path of travel, but do not require
wheelchair use inside the cell or a wheelchair accessible cell."
Howard v. Wang, 2014 WL 3687728, at *5 (E.D. Cal. July 24, 2014).

1 Prison Rape Elimination Act Procedure's [sic], Effective
2 Date 12/2003 Revision 7/2007 at page 1-2 and attachment
3 A - Treatment recommendation for evaluation and follow
4 up care, testing, outside mental health interventions
5 for PTSD as required for all PREA victims.

6
7 (Id. at 5). Not only is the violation of a prison policy or
8 regulation insufficient, by itself, to constitute a violation of a
9 federal constitutional right, but also, many of the portions of
10 the PREA procedure highlighted by Plaintiff in Exhibit 3 would
11 seemingly not apply to a patient's treatment ten years after an
12 alleged sexual assault. (See id. at 16 (handwritten checkmarks
13 next to each of nine items on a list of actions that licensed
14 health care staff must take pursuant to the CDCR's Department
15 Operations Manual for "incidents reported within 72 hours of the
16 event," including ensuring that the patient does "not shower,
17 remove clothing, use rest room facilities, or consume liquids")).
18 Additionally, it is unclear how Lotasztain's refusal "to speak to
19 the Federal Bureau for PREA Victims" put Plaintiff in jeopardy or
20 violated his constitutional rights. Plaintiff does not explain
21 how and when Lotasztain learned that he had been a victim of sexual
22 assault while incarcerated, which specific provisions of the
23 prison's PREA procedures Lotasztain failed to follow, why
24 Lotasztain knew that the failure to follow those specific
25 provisions would cause Plaintiff unnecessary harm, or what specific
26 harm resulted from those failures.

1 Similarly, while Plaintiff complains that Lotasztain
2 discontinued medications prescribed by other mental health
3 providers for psychological conditions that may or may not have
4 any connection to the 2008 sexual assault, the only example he
5 gives is the prescription for Gabapentin, which he claims
6 Lotasztain discontinued "for no reason." (TAC at 5). However,
7 Exhibit 1 to the TAC explains that Plaintiff was prescribed
8 Gabapentin to ease physical pain, in particular in his legs, that
9 was disrupting his sleep. (Id. at 9). Accordingly, it is unclear
10 if Gabapentin was prescribed by a mental health provider and if it
11 is one of the medications (or the only medication) that Plaintiff
12 was referring to when he alleged that Lotasztain wrongly
13 discontinued medications prescribed by mental health providers.

14
15 With respect to his heart condition, Plaintiff adequately
16 alleges that he had a serious medical condition with an ejection
17 fraction of 35% to 25%. (Id. at 6). However, he does not explain
18 why the heart care he was receiving at the prison was inadequate,
19 why and how Lotasztain knew that he required an immediate
20 consultation with a cardiologist, or what harm he suffered from
21 Lotasztain's failure to refer him to a cardiologist. Similarly,
22 with respect to his diabetes, Plaintiff adequately alleges that he
23 had a serious medical condition and that he suffered harm from low
24 blood sugar as a consequence of being forced to take his diabetes
25 medication in the early morning without food, two hours before
26 breakfast. However, the TAC does not explain whether Plaintiff
27 ever discussed the physical effects he suffered with Lotasztain or
28 that she ever learned of them from any other source.

1 In addition to these substantive deficiencies, the presentation
2 of Plaintiff's various conditions in the TAC is disjointed, as
3 Plaintiff's claims seem to fluctuate between conclusory allegations
4 of constitutional violations and vague contentions that Lotasztain
5 failed to follow unspecified prison regulations. As a result, the
6 TAC is challenging to understand and does not "give the defendant
7 fair notice of what the . . . claim is and the grounds upon which
8 it rests." Twombly, 550 U.S. at 555 (quoting Conley v. Gibson,
9 355 U.S. 41, 47 (1957)); see also Kwan v. SanMedica Int'l 854 F.3d
10 1088, 1093 (9th Cir. 2017) (holding that complaints may be
11 dismissed based on either lack of a cognizable legal theory or
12 insufficient facts under a cognizable theory). Also, some of the
13 Exhibits do not have any apparent relationship to the violations
14 alleged in the TAC. For example, the last two pages of Exhibit 5
15 are a letter written by Plaintiff addressed to "Attorneys" in which
16 Plaintiff appears to complain of trademark infringement of his "LG"
17 brand of children's toys. (Id. at 24-25). These extraneous,
18 unexplained and unnecessary documents further obscure whatever
19 actual claims Plaintiff may be trying to assert, and should be
20 omitted in any further amendments to the complaint.

21
22 To properly plead his claims, Plaintiff should allege only
23 the facts that are relevant to the claim against Lotasztain that
24 give rise to a § 1983 action. Without more specific allegations
25 explicitly describing Lotasztain's particular acts and omissions,
26 Plaintiff has not plausibly pled that Lotasztain was personally
27 involved in violating his rights or that her actions had any causal
28

1 connection to the purported constitutional violations.
2 Accordingly, the TAC is dismissed, with leave to amend.

3
4 **IV.**

5 **CONCLUSION**

6
7 For the reasons stated above, the Third Amended Complaint is
8 dismissed with leave to amend. If Plaintiff still wishes to pursue
9 this action, he is granted **thirty (30) days** from the date of this
10 Memorandum and Order within which to file a Fourth Amended
11 Complaint. In any amended complaint, Plaintiff shall **cure the**
12 **defects** described above. **Plaintiff shall not include new**
13 **defendants or new allegations that are not reasonably related to**
14 **the claims asserted in the TAC.** The Fourth Amended Complaint, if
15 any, shall be complete in itself and shall not refer in any manner
16 to the original Complaint, the FAC, the SAC or the TAC. Its caption
17 page shall bear the designation "Fourth Amended Complaint" and the
18 case number assigned to this action.

19
20 The Fourth Amended Complaint should be **short** and **concise**. In
21 any amended complaint, Plaintiff should confine his allegations to
22 only those operative facts supporting each of his claims.
23 Plaintiff is advised that pursuant to Federal Rule of Civil
24 Procedure 8(a), all that is required is a "short and plain statement
25 of the claim showing that the pleader is entitled to relief."
26 **Plaintiff is strongly encouraged to utilize the standard civil**
27 **rights complaint form when filing any amended complaint, a copy of**
28 **which is attached.** In any amended complaint, Plaintiff should

