

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHANE MATTHEW MULVIHILL,)	No. CV17-00079-MWF (AS)
)	
Plaintiff,)	ORDER DISMISSING COMPLAINT WITH
v.)	LEAVE TO AMEND
DEAN BORDERS,)	
Defendant.)	
)	
)	

I.
INTRODUCTION

On December 23, 2016, Plaintiff Shane Matthew Mulvihill ("Plaintiff"), a prisoner at California Institution for Men ("CIM") in Chino, California, filed a Complaint pursuant to 42 U.S.C. § 1983. (Docket Entry No. 1). The Complaint names Dean Borders, Warden of CIM as the sole defendant ("Defendant"). (See Complaint ("Compl.") at 1).

Plaintiff alleges that, under § 1983 and California Code of Regulations ("CCR"), Title 15 § 3350(a), Defendant violated

1 Plaintiff's Eighth Amendment right against cruel and unusual
2 punishment by acting deliberately indifferent to Plaintiff's serious
3 medical needs. (Compl. at 2-5).

4
5 The Court has screened the Complaint as prescribed by 28 U.S.C.
6 § 1915A and 42 U.S.C. § 1997e. For reasons discussed below, the
7 Court DISMISSES the COMPLAINT WITH LEAVE TO AMEND.¹

8
9 **II.**

10 **ALLEGATIONS OF THE COMPLAINT**

11
12 Plaintiff alleges that he was denied necessary medical treatment
13 while housed at CIM. (Compl. at 2-5). On June 25, 2016, Plaintiff
14 filed a request for pain medication to treat "two herniated disks,
15 [a] pinched nerve, arthritis, and degenerative disk disease." (Id.
16 at 2). Plaintiff allegedly explained to Dr. W. Aqil D.O. that he had
17 "fallen twice since arriving at [CIM]," and his back pain was
18 "getting worse." (Id.). Plaintiff was prescribed 400 milligrams of
19 Ibuprofen to be taken three times a day, but Plaintiff also alleges
20 that "no new medical attention [was] rendered . . ." (id.).

21
22 On July 14, 2016, Plaintiff filed a request, stating that "his
23 back pain [was] getting worse and travelling to other parts of his
24 body." (Id.). No new medical attention was rendered. On July 27,
25 2016, Plaintiff filed a complaint, stating that he was "refused

26
27 ¹ Magistrate Judges may dismiss a complaint with leave to amend
28 without approval from the district judge. McKeever v. Block,
932 F.2d 795, 798 (9th Cir. 1991).

1 proper medical treatment/procedures for his back condition" and
2 requested a MRI and an appointment with a specialist "to diagnose the
3 severity of the problem." (Id.). Plaintiff's complaint was reviewed
4 and denied because of "lack of medical history from both private
5 hospitals and county jail." (Id.). On August 25, 2016, Plaintiff
6 saw Dr. Aqil and described "the ongoing medical problems he was
7 having in regard to pain, movement, and mobility." (Id. at 3). On
8 September 11, 2016, Plaintiff filed a "second level appeal," which
9 was allegedly denied on October 7, 2016, because there was "no
10 supporting documents to justify further treatment." (Id. at 4).
11 Plaintiff allegedly informed CIM that his medical records were
12 located at the county jail that he was transferred from, but his
13 request "was still denied." (Id.).

14
15 On August 17, 2016, Plaintiff filed an appeal, stating that "he
16 [was] in need of being allowed to use a bowl during chow, due to
17 having Gastric Bypass surgery and [could] only consume small meal[s]
18 throughout the day." (Id.). On August 30, 2016, Plaintiff received
19 notice that his appeal was "canceled" and was "advised to submit a
20 Health Care appeal form," which he filed. (Id.). The appeal was
21 denied because such a request was not a "healthcare services issue
22 over which California Correctional Health Care Services ha[d]
23 jurisdiction." (Id.). Plaintiff allegedly informed Dr. Aqil about
24 the denial, and Dr. Aqil did not update Plaintiff's "Chrono" to state
25 that Plaintiff needed to use a bowl during meal services. (Id.).

26
27 Plaintiff requests declaratory and injunctive relief in order to
28 "receive proper medical care" and see a specialist; \$25,000 in

1 monetary damages; and for the Court to "issue a writ of habeas
2 corpus." (Id. at 9).

3
4 **III.**

5 **STANDARD OF REVIEW**

6
7 Congress mandates that district courts initially screen civil
8 complaints filed by prisoners seeking redress from a governmental
9 entity or employee. 28 U.S.C. § 1915A. A court may dismiss such a
10 complaint, or any portion thereof, before service of process, if the
11 court concludes that the complaint (1) is frivolous or malicious;
12 (2) fails to state a claim upon which relief may be granted; or
13 (3) seeks monetary relief from a defendant who is immune from such
14 relief. 28 U.S.C. § 1915A(b)(1)-(2); see also Lopez v. Smith,
15 203 F.3d 1122, 1126-27 & n.7 (9th Cir. 2000) (en banc).

16
17 Dismissal for failure to state a claim is appropriate if a
18 complaint fails to proffer "enough facts to state a claim for relief
19 that is plausible on its face." Bell Atl. Corp. v. Twombly,
20 550 U.S. 544, 570 (2007); Ashcroft v. Iqbal, 556 U.S. 662, 678
21 (2009). "A claim has facial plausibility when the plaintiff pleads
22 factual content that allows the court to draw the reasonable
23 inference that the defendant is liable for the misconduct alleged."
24 Iqbal, 556 U.S. at 678; see also Hartmann v. Cal. Dep't of Corr.
25 & Rehab., 707 F.3d 1114, 1122 (9th Cir. 2013). A plaintiff must
26 provide more than "labels and conclusions" or a "formulaic recitation
27 of the elements" of his claim. Twombly, 550 U.S. at 555; Iqbal,
28 556 U.S. at 678. However, "[s]pecific facts are not necessary; the

1 [complaint] need only 'give the defendant fair notice of what the
2 . . . claim is and the grounds upon which it rests.'" Erickson v.
3 Pardus, 551 U.S. 89, 93 (2007) (per curiam) (quoting Twombly, 550
4 U.S. at 555).

5
6 In considering whether to dismiss a complaint, a court is
7 generally limited to the pleadings and must construe all "factual
8 allegations set forth in the complaint . . . as true and . . . in the
9 light most favorable" to the plaintiff. Lee v. City of L.A.,
10 250 F.3d 668, 679 (9th Cir. 2001). Moreover, pro se pleadings are
11 "to be liberally construed" and held to a less stringent standard
12 than those drafted by a lawyer. Erickson, 551 U.S. at 94; see also
13 Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) ("Iqbal
14 incorporated the Twombly pleading standard and Twombly did not alter
15 courts' treatment of pro se filings; accordingly, we continue to
16 construe pro se filings liberally when evaluating them under
17 Iqbal"). Nevertheless, dismissal for failure to state a claim can
18 be warranted based on either the lack of a cognizable legal theory or
19 the absence of factual support for a cognizable legal theory.
20 Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir.
21 2008). A complaint may also be dismissed for failure to state a
22 claim if it discloses some fact or complete defense that will
23 necessarily defeat the claim. Franklin v. Murphy, 745 F.2d 1221,
24 1228-29 (9th Cir. 1984).

25 \\

26 \\

27 \\

28 \\

1 IV.

2 DISCUSSION

3
4 The Complaint contains deficiencies warranting dismissal,
5 although leave to amend will be granted. See 28 U.S.C. §
6 1915A(b)(1).

7
8 **A. The Complaint Fails To Satisfy Federal Rule Of Civil Procedure 8**

9
10 As currently pled, Plaintiff's allegations do not provide
11 sufficient detail to assert a § 1983 claim in accordance with Federal
12 Rule of Civil Procedure 8. Rule 8 requires, in relevant, part that a
13 complaint contain "'a short and plain statement of the claim showing
14 that the pleader is entitled to relief,' in order to 'give the
15 defendant fair notice of what the . . . claim is and the grounds upon
16 which it rests.'" Twombly, 550 U.S. at 555 (quoting Fed. R. Civ. P.
17 8(a)). Rule 8 therefore requires more than a blanket assertion of
18 entitlement to relief; without some factual allegations in the
19 complaint it is hard to see how a claimant could satisfy the
20 requirement of providing not only fair notice of the nature of the
21 claim, but also grounds on which the claim rests. Fed. R. Civ. P.
22 8(a)(2); Twombly, 550 U.S. at 555.

23
24 Here, the Complaint does not comply with Rule 8 because it
25 contains conclusory and confusing allegations. Plaintiff alleges
26 that his requests for medications and doctors' appointments were
27 denied, but Plaintiff also references seeing Dr. Aqil on several
28 occasions and being prescribed Ibuprofen. (See Compl. at 2-5).

1 Moreover, Plaintiff generally asserts that his appeals were denied,
2 but he fails to state what department denied his appeal or who was
3 aware that Plaintiff's medical records were located at the county
4 jail. A complaint is subject to dismissal for failure to state a
5 claim if "one cannot determine from the complaint who is being sued,
6 for what relief, and on what theory." McHenry v. Renne, 84 F.3d
7 1172, 1178 (9th Cir. 1996); see also Chevalier v. Ray and Joan Kroc
8 Corps. Cmty. Ctr., No. C-11-4891 SBA, 2012 WL 2088819, *2 (N.D. Cal.
9 June 8, 2012) (complaint that did not "identify which wrongs were
10 committed by which Defendant" violated Rule 8).

11
12 Consequently, the Complaint does not show there are plausible
13 grounds for relief, nor does it provide enough facts for the
14 Defendant to properly respond to the Complaint. Cafasso, U.S. ex
15 rel. v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1059 (9th Cir.
16 2011). Plaintiff fails to name what CIM personnel carried out the
17 activities discussed in the Complaint, and Defendant cannot
18 adequately respond to the Complaint without this basic information.
19 Accordingly, the Complaint is dismissed with leave in order to
20 provide more facts to satisfy Rule 8.

21
22 **B. The Complaint Fails To State An Eighth Amendment Claim For**
23 **Deliberate Indifference To Serious Medical Needs**

24
25 In order to state a § 1983 claim for inadequate medical care, a
26 plaintiff must allege acts or omissions by prison officials that are
27 sufficiently harmful to evidence deliberate indifference to an
28 inmate's "serious medical needs." Farmer v. Brennan, 511 U.S. 825,

1 834 (1994); Estelle v. Gamble, 429 U.S. 97, 104 (1976). A plaintiff
2 can show a serious medical need by demonstrating that failure to
3 treat the condition could result in further significant injury or
4 the unnecessary and wanton infliction of pain. Farmer, 511 at 834;
5 see also Lopez v. Smith, 203 F.2d 1122, 1131 (9th Cir. 2000) (en
6 banc) (examples of "serious medical needs" include "a medical
7 condition that significantly affects an individual's daily
8 activities," and "the existence of chronic and substantial pain")
9 (citation omitted). Plaintiff's alleged back pain appears to
10 satisfy the requirement that Plaintiff suffers from a "serious
11 medical need." However, Plaintiff has not satisfied the subjective
12 component of his claim.

13
14 To be liable for "deliberate indifference," a jail official
15 must "both be aware of facts from which the inference could be drawn
16 that a substantial risk of serious harm exists, and he must also
17 draw the inference." Farmer, 511 U.S. at 837. "[A]n official's
18 failure to alleviate a significant risk that he should have
19 perceived but did not, while no cause for commendation, cannot . . .
20 be condemned as the infliction of punishment." Id. at 838. Thus,
21 inadequate treatment because of accident, mistake, inadvertence, or
22 even gross negligence does not amount to a constitutional violation.
23 Estelle v. Gamble, 429 U.S. 97, 105-06 (1976). Even civil
24 recklessness (failure to act in the face of an unjustifiably high
25 risk of harm which is so obvious that it should be known) is
26 insufficient to establish a violation. Farmer, 511 U.S. at 836-37.
27 Similarly, a showing of medical malpractice or negligence is also
28 insufficient to establish a constitutional deprivation. See Toguchi

1 v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) (deliberate
2 indifference established only where defendant subjectively “knows of
3 and disregards an excessive risk to inmate health and safety.”). An
4 inmate’s disagreement with his medical treatment or a difference of
5 opinion over the type or course of treatment does not support a
6 claim of cruel and unusual punishment under the Eighth Amendment.
7 Randle v. Alexander, 960 F.Supp. 2d 457, 481 (S.D.N.Y. 2013).

8
9 Plaintiff’s allegations fail to state a claim under these
10 standards. Plaintiff has not alleged specific facts establishing
11 that Defendant had actual knowledge of Plaintiff’s serious medical
12 needs and purposely decided to deny, delay, or intentionally
13 interfere with medical treatment. See Jett v. Penner, 439 F.3d
14 1091, 1096 (9th Cir. 2006). Plaintiff alleges that he filed
15 requests to see a specialist, have a MRI done, and be placed on a
16 special meal plan, which were all denied. However, Plaintiff was
17 prescribed Ibuprofen and seen by a doctor. (Compl. at 2-5). The
18 mere failure to grant Plaintiff’s requests or Plaintiff’s
19 disagreement about the course of his treatment is not sufficient to
20 satisfy Section 1983’s stringent deliberate indifference standard.
21 Plaintiff has not alleged any facts that establish that Defendant
22 knew of and disregarded an excessive risk to Plaintiff’s health or
23 safety. See Toguchi v. Chung, 391 F.3d at 1057. At best, Plaintiff
24 has alleged that Defendant acted negligently by failing to grant
25 Plaintiff’s requests, but mere negligence does not violate an
26 inmate’s Fourteenth Amendment rights. See Hutchinson v. United
27 States, 838 F.2d 390, 394 (9th Cir. 1988). Accordingly, Plaintiff
28 cannot demonstrate, on the facts alleged, that Defendant acted with

1 deliberate indifference by depriving Plaintiff of adequate medical
2 care.

3
4 **C. Plaintiff's Claims For Damages Against Defendant In His Official**
5 **Capacity Must Be Dismissed**

6
7 Plaintiff requests \$25,000 in money damages from Defendant, as
8 the "legal custodian" of Plaintiff.² (Compl. at 1). Plaintiff is
9 advised that the Eleventh Amendment bars actions in federal court for
10 money damages against state officers sued in their official
11 capacities. See Will v. Michigan Department of State Police, 491
12 U.S. 58, 71 (1989); Krainski v. Nevada ex rel. Bd. of Regents of
13 Nevada System of Higher Educ., 616 F.3d 963, 967-68 (9th Cir. 2010).
14 Therefore, any damages claims against Defendant in his official
15 capacity must be dismissed.

16
17 **D. Plaintiff Fails To Adequately Allege Personal Participation By**
18 **Defendant**

19
20 Liability under § 1983 requires a defendant's personal
21 participation. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989)
22 (citations omitted); see also Iqbal, 556 U.S. at 676 ("Because
23 vicarious liability is inapplicable to Bivens and § 1983 suits, a
24 plaintiff must plead that each Government-official defendant, through
25 the official's own individual actions, has violated the
26 Constitution."). A supervisor is only liable for the constitutional

27
28 ² Plaintiff does not state whether Defendant is sued in his
official or individual capacity. (See Compl. at 1).

1 violations of subordinates if the supervisor participated in or
2 directed the violations, or knew of the violations and failed to act
3 to prevent them. Taylor, 880 F.2d at 1045.

4
5 Defendant is the warden of CIM, and he is therefore a
6 supervisory official. (Compl. at 1). Plaintiff asserts that
7 Defendant is the "legal custodian" of Plaintiff, but Plaintiff does
8 not allege any other facts to demonstrate that Defendant was
9 personally involved in the alleged acts. (Id.). Thus, Plaintiff's
10 allegations against Defendant appear to be based on vicarious
11 liability, which is inapplicable in a § 1983 action. Because
12 "[v]ague and conclusory allegations of official participation in
13 civil rights violations are not sufficient to withstand a motion to
14 dismiss," Ivey v. Bd. Of Regents, 673 F.2d 266, 268 (9th Cir. 1982);
15 see also Bruns v. Nat'l Credit Union Admin., 122 F.3d 1251, 1257 (9th
16 Cir. 1997), Plaintiff has not stated a claim against Defendant.
17 Plaintiff's claim against Defendant must be dismissed with leave to
18 amend.

19
20 **E. There Is No Private Right Of Action Under CCR, Title 15**

21
22 Although Plaintiff alleges a claim under CCR, Title 15 §
23 3350(a) (Compl. at 6), the Court has found no authority that creates
24 or acknowledges a private right of action under CCR, Title 15. The
25 mere existence of regulations that govern the conduct of prison
26 employees does not necessarily entitle Plaintiff to sue civilly to
27 enforce these regulations. See e.g., Cousins v. Lockyer, 568 F.3d
28 1063, 1070 (9th Cir. 2009) (violation of "State departmental

1 regulations do not establish a federal constitutional violation");
2 Spencer v. Brazelton, No. 1:14-CV-0707-MJS, 2015 WL 75141, at *2
3 (E.D. Cal. Jan. 6, 2015) ("The mere existence of the CCR and DOM
4 does not create a civil cause of action for violation of their
5 terms."). Because no independent claim for a violation of CCR,
6 Title 15 exists, leave to amend Plaintiff's Title 15 claims would be
7 futile, and is therefore denied.

8
9 **F. Writ Of Habeas Corpus Relief Cannot Be Granted In A § 1983 Civil**
10 **Rights Action**

11
12 "[T]he exclusive federal remedy for a state prisoner seeking
13 release from confinement is habeas corpus, with its attendant
14 requirement of exhaustion of state remedies." Ybarra v. Reno
15 Thunderbird Mobile Home Vill., 723 F.2d 675, 681 (9th Cir. 1984)
16 (citing Preiser v. Rodriguez, 411 U.S. 475, 499 n. 14 (1973)).
17 Habeas corpus relief is not an "appropriate or available remedy for
18 damages claims" brought under § 1983, and the Court will deny any
19 request for habeas corpus relief in a § 1983 action. Wolff v.
20 McDonnell, 418 U.S. 539 (1974); see also Wilkinson v. Dotson, 544
21 U.S. 74, 78 (2005) ("This Court has held that a prisoner in state
22 custody cannot use a § 1983 action to challenge 'the fact or duration
23 of his confinement.'").

24
25 Here, Plaintiff has filed claims under § 1983, but Plaintiff
26 requests the Court to "[i]ssue a writ of habeas corpus" upon success
27 on the merits of his claims. (Compl. at 9). Plaintiff is advised
28

1 that he is precluded from obtaining habeas corpus relief through this
2 § 1983 action.

3
4 **V.**

5 **ORDER**

6
7 For the reasons discussed above, the Court DISMISSES the
8 Complaint WITH LEAVE TO AMEND. If Plaintiff still wishes to pursue
9 this action, he shall file a First Amended Complaint **no later than 30**
10 **days from the date of this Order. The First Amended Complaint must**
11 **cure the pleading defects discussed above and shall be complete in**
12 **itself without reference to the original Complaint. See L.R. 15-2**
13 **("Every amended pleading filed as a matter of right or allowed by**
14 **order of the Court shall be complete including exhibits. The amended**
15 **pleading shall not refer to the prior, superseding pleading.").** This
16 means that Plaintiff must allege and plead any viable claims in the
17 original Complaint again.

18
19 In any amended complaint, Plaintiff should identify the nature
20 of each separate legal claim and confine his allegations to those
21 operative facts supporting each of his claims. Pursuant to Federal
22 Rule of Civil Procedure 8(a), all that is required is a "short and
23 plain statement of the claim showing that the pleader is entitled to
24 relief." However, Plaintiff is advised that the allegations in the
25 First Amended Complaint should be consistent with the authorities
26 discussed above. In addition, the First Amended Complaint may not
27 include new Defendants or claims not reasonably related to the
28 allegations in the previously filed complaints. **Plaintiff is**

1 strongly encouraged to once again utilize the standard civil rights
2 complaint form when filing any amended complaint, a copy of which is
3 attached.
4

5 Plaintiff is explicitly cautioned that failure to timely file a
6 First Amended Complaint, or failure to correct the deficiencies
7 described above, may result in a recommendation that this action, or
8 portions thereof, be dismissed with prejudice for failure to
9 prosecute and/or failure to comply with court orders. See Fed. R.
10 Civ. P. 41(b). Plaintiff is further advised that if he no longer
11 wishes to pursue this action in its entirety or with respect to
12 particular Defendants or claims, he may voluntarily dismiss all or
13 any part of this action by filing a Notice of Dismissal in accordance
14 with Federal Rule of Civil Procedure 41(a)(1). A form Notice of
15 Dismissal is attached for Plaintiff's convenience.
16

17 IT IS SO ORDERED.
18

19 Dated: February 21, 2017
20

21 _____/s/_____
22 ALKA SAGAR
23 United States Magistrate Judge
24
25
26
27
28