UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	EDCV 17-485-PA (PJW)	Date	July 24, 2017
Title	*Carlos Alfredo Melara v. Unknown*		

Present: The Honorable Patrick J. Walsh, U.S. Magistrate Judge

Isabel Martinez	N/A	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiff:	Attorneys Present for Defendants
N/A	N/A

Proceedings: Order to Show Cause Why Action Should Not Be Dismissed

Before the Court is a civil rights complaint filed by Plaintiff, currently confined at the Praireland ICE Detention Center in Alvarado, Texas, against "unknown" Defendants. Plaintiff alleges that, while confined at USP-Victorville in 2014 through 2016, he received negligent medical care and treatment. In particular, he claims that he was taken to a hospital by some officers and was injected with medication and then given an MRI. He claims that when he asked the officers what they were doing, they told him to be quiet. A few days after the MRI, discolorations appeared on his head and face (red and blue spots), and he felt numbness and pain in his right leg. (Complaint at 1-3.) He seeks damages against the unnamed Defendants for malpractice. (Complaint at 4.) After screening the Complaint, the Court finds that Plaintiff has not and likely cannot state a cause of action under *Bivens* v. *Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). The Court will, however, allow Plaintiff the opportunity to explain why the case should not be dismissed with prejudice at this stage.

The Court is required to screen *pro se* complaints brought by prisoners and dismiss claims that, among other things, are frivolous, malicious, or fail to state a claim upon which relief can be granted. 28 U.S.C. § 1915(e). In evaluating whether Plaintiff has stated a claim, the Court accepts as true the factual allegations contained in the Complaint and views all inferences in a light most favorable to him. *See Hamilton v. Brown*, 630 F.3d 889, 892 (9th Cir. 2011). The Court does not, however, "accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Because Plaintiff is proceeding *pro se*, the Court construes the Complaint liberally. *Barrett v. Belleque*, 544 F.3d 1060, 1061-62 (9th Cir. 2008) (per curiam).

Initially, it is not clear to the Court under what theory Plaintiff is proceeding or what rights he claims have been violated by Defendants. To state a claim under the Eighth Amendment, a prisoner must allege that officials were deliberately indifferent to his serious medical needs. *See Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006). Deliberate indifference "may appear when prison officials deny, delay or intentionally interfere with medical treatment, or it may be shown by the way in which prison physicians provide medical care." *Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988). A medical care provider, however, is only liable for denying a prisoner needed medical care if he "knows of and disregards an excessive risk to inmate health or safety." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The conduct must be purposeful and substantial; negligence, inadvertence, or differences in medical judgment or opinion do not rise to the level of deliberate indifference. *See Estelle v. Gamble*,

429 U.S. 97, 104-07 (1976); *Farmer*, 511 U.S. 825, 835 (1994) ("*Estelle* establishes that deliberate indifference entails something more than mere negligence . . . .").

Mere medical malpractice, even if grossly negligent, does not give rise to a civil rights claim. *Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990). "Medical malpractice does not become a constitutional violation merely because the victim is a prisoner." *Estelle*, 429 U.S. at 106.

The crux of Plaintiff's claim is that Defendants acted negligently or committed medical malpractice when they injected him with a dye, apparently, and performed an MRI on him. Assuming, arguendo, that Plaintiff is correct, he has not and cannot state a constitutional claim against Defendants based on negligence. *See Estelle*, 429 U.S. at 106 ("[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."); *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989) (concluding prison officials were not deliberately indifferent where specialist recommended surgery, but subsequent treating physicians concluded surgery was unnecessary); *Wilhelm v. Rotman*, 680 F.3d 1113, 1123 (9th Cir. 2012) ("Dr. Schuster's alleged failure was negligent misdiagnosis, or a disagreement with Dr. Rotman. Therefore, the allegations are insufficient to establish deliberate indifference by Dr. Schuster."). Further, it does not appear that anything Plaintiff can say or do can cure the defects in his Complaint--particularly in light of the fact that Plaintiff's Complaint is verified, thus locking him into his claim that the conduct he complains of constituted negligence or malpractice. However, recognizing that Plaintiff is proceeding *pro se*, the Court will allow him an opportunity to explain why the Complaint should not be dismissed with prejudice. Plaintiff has until **August 17, 2017**, to file his brief. Plaintiff is warned that failure to file on time may result in the case being dismissed for failure to prosecute pursuant to Federal Rules of Civil Procedure 41.

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