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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JULIE DAUGHERTY,

Plaintiff,

v.

SCOTT LEE,

Defendant.

Case No. EDCV 17-972 JVS(JC)
ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND

I. BACKGROUND AND SUMMARY

On April 24, 2017, in the United States District Court for the Northern District of California, Julie Daugherty (“plaintiff”), who was then in custody at the California Institution for Women in Corona, California (“CIW”), is proceeding without a lawyer (*i.e.*, “*pro se*”), and has been granted leave to proceed *in forma pauperis*, filed a Civil Rights Complaint (“Complaint”) pursuant to 42 U.S.C. § 1983 (“Section 1983”) with attached exhibits naming as the sole defendant Dr. Scott Lee (“Lee”), an “OBGYN” at the CIW. (Complaint at 1-2). The case was subsequently transferred to the Central District of California and assigned to this Court for adjudication.

1 Very liberally construed, the Complaint appears to attempt to assert one or
2 more civil rights claims stemming from defendant Lee’s medical treatment of
3 plaintiff. Plaintiff seeks injunctive and monetary relief.

4 As the Complaint is deficient in multiple respects, including those detailed
5 below, it is dismissed with leave to amend.

6 **II. THE SCREENING REQUIREMENT**

7 As plaintiff is proceeding *in forma pauperis*, the Court must screen the
8 Complaint, and is required to dismiss the case at any time it concludes the action is
9 frivolous or malicious, fails to state a claim on which relief may be granted, or
10 seeks monetary relief against a defendant who is immune from such relief. See
11 28 U.S.C. §§ 1915(e)(2)(B).

12 When screening a complaint to determine whether it states any claim that is
13 viable (*i.e.*, capable of succeeding), the Court applies the same standard as it would
14 when evaluating a motion to dismiss under Federal Rule of Civil Procedure
15 12(b)(6). See Rosati v. Igbinoso, 791 F.3d 1037, 1039 (9th Cir. 2015) (citation
16 omitted). Rule 12(b)(6), in turn, is read in conjunction with Rule 8(a) of the Federal
17 Rules of Civil Procedure. Zixiang Li v. Kerry, 710 F.3d 995, 998-99 (9th Cir.
18 2013). Under Rule 8, a complaint must contain a “short and plain statement of the
19 claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). While
20 Rule 8 does not require detailed factual allegations, at a minimum a complaint must
21 allege enough specific facts to provide *both* “fair notice” of the particular claim
22 being asserted *and* “the grounds upon which [that claim] rests.” Bell Atlantic Corp.
23 v. Twombly, 550 U.S. 544, 555 & n.3 (2007) (citation and quotation marks
24 omitted); see also Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (Rule 8 pleading
25 standard “demands more than an unadorned, the-defendant-unlawfully-harmed-me
26 accusation”) (citing id. at 555). In addition, under Rule 10 of the Federal Rules of
27 Civil Procedure (“Rule 10”), a complaint, among other things, must (1) state a
28 party’s claims in sequentially “numbered paragraphs, each limited as far as

1 practicable to a single set of circumstances”; and (2) where “doing so would
2 promote clarity,” state “each claim founded on a separate transaction or occurrence .
3 . . . in a separate count”. . . .” Fed. R. Civ. P. 10(b).

4 Thus, to avoid dismissal, a civil rights complaint must “contain sufficient
5 factual matter, accepted as true, to state a claim to relief that is plausible on its
6 face.” Nordstrom v. Ryan, 762 F.3d 903, 908 (9th Cir. 2014) (citations and
7 quotation marks omitted). A claim is “plausible” when the facts alleged in the
8 complaint would support a reasonable inference that the plaintiff is entitled to relief
9 from a specific defendant for specific misconduct. Iqbal, 556 U.S. at 678 (citation
10 omitted). Allegations that are “merely consistent with” a defendant’s liability, or
11 reflect only “the mere possibility of misconduct” do not “show[] that the pleader is
12 entitled to relief” (as required by Fed. R. Civ. P. 8(a)(2)), and thus are insufficient
13 to state a claim that is “plausible on its face.” Iqbal, 556 U.S. at 678-79 (citations
14 and quotation marks omitted). At this preliminary stage, “well-pleaded factual
15 allegations” in a complaint are assumed true, while “[t]hreadbare recitals of the
16 elements of a cause of action” and “legal conclusion[s] couched as a factual
17 allegation” are not. Id. (citation and quotation marks omitted); Jackson v. Barnes,
18 749 F.3d 755, 763 (9th Cir. 2014) (“mere legal conclusions ‘are not entitled to the
19 assumption of truth’”) (quoting id.), cert. denied, 135 S. Ct. 980 (2015).

20 *Pro se* complaints are interpreted liberally to give plaintiffs “the benefit of
21 any doubt.” Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012) (citation and
22 internal quotation marks omitted). If a *pro se* complaint is dismissed because it
23 does not state a claim, the court must freely grant “leave to amend” (that is, give the
24 plaintiff a chance to file a new, corrected complaint) if it is “at all possible” that the
25 plaintiff could fix the identified pleading errors by alleging different or new facts.
26 Cafasso v. General Dynamics C4 Systems, Inc., 637 F.3d 1047, 1058 (9th Cir.
27 2011) (citation omitted); Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000)
28 (en banc) (citations and internal quotation marks omitted).

1 **III. PERTINENT LAW**

2 **A. Section 1983**

3 To state a claim under Section 1983, a plaintiff must allege that a defendant,
4 while acting under color of state law, caused a deprivation of the plaintiff’s federal
5 rights. 42 U.S.C. § 1983; West v. Atkins, 487 U.S. 42, 48 (1988) (citations
6 omitted); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (citation omitted).
7 There is no vicarious liability in Section 1983 lawsuits. Iqbal, 556 U.S. at 676
8 (citing, *inter alia*, Monell v. Department of Social Services of the City of New
9 York, 436 U.S. 658, 691 (1978)). Hence, a government official – whether
10 subordinate or supervisor – may be held liable under Section 1983 only when his
11 own actions have caused a constitutional deprivation. OSU Student Alliance v.
12 Ray, 699 F.3d 1053, 1069 (9th Cir. 2012) (citing id.), cert. denied, 134 S. Ct. 70
13 (2013).

14 An individual “causes” a constitutional deprivation basically when he
15 (1) “does an affirmative act, participates in another’s affirmative acts, or omits to
16 perform an act which he is legally required to do that causes the deprivation”; or (2)
17 “set[s] in motion a series of acts by others which the [defendant] knows or
18 reasonably should know would cause others to inflict the constitutional injury.”
19 Lacey v. Maricopa County, 693 F.3d 896, 915 (9th Cir. 2012) (en banc) (quoting
20 Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978)) (quotation marks omitted).

21 **B. Eighth Amendment – Deliberate Indifference to Serious Medical**
22 **Needs**

23 Prison officials violate the Eighth Amendment when they respond with
24 deliberate indifference to an inmate’s serious medical needs. Estelle v. Gamble,
25 429 U.S. 97, 103-05 (1976) (citations and footnotes omitted).

26 An inmate’s medical need is sufficiently “serious” if, objectively, the failure
27 to treat it “will result in significant injury or the unnecessary and wanton infliction
28 of pain.” Peralta v. Dillard, 744 F.3d 1076, 1081 (9th Cir. 2014) (en banc)

1 (citations and internal quotation marks omitted), cert. denied, 135 S. Ct. 946 (2015).
2 Such medical needs include “[t]he existence of an injury that a reasonable doctor or
3 patient would find important and worthy of comment or treatment; the presence of a
4 medical condition that significantly affects an individual’s daily activities; or the
5 existence of chronic and substantial pain. . . .” McGuckin v. Smith, 974 F.2d 1050,
6 1059 (9th Cir. 1991) (citations omitted), overruled on other grounds by WMX
7 Technologies, Inc., v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc).

8 A prison official acts with deliberate indifference when the official is
9 subjectively aware of, but *purposefully* ignores or fails to respond to an “excessive
10 risk to inmate health” (*i.e.*, a serious medical need). Colwell v. Bannister, 763 F.3d
11 1060, 1066 (9th Cir. 2014) (citations omitted). A defendant’s alleged indifference
12 must be “substantial.” Estelle, 429 U.S. at 105-06; Lemire v. California
13 Department of Corrections and Rehabilitation, 726 F.3d 1062, 1081-82 (9th Cir.
14 2013) (citations omitted). A prison doctor’s mistake, negligence, or malpractice
15 does not establish deliberate indifference to serious medical needs. Estelle, 429
16 U.S. at 105-06. “Even gross negligence is insufficient” Lemire, 726 F.3d at
17 1082 (citation omitted). “[T]he official must both be aware of facts from which the
18 inference could be drawn that a substantial risk of serious harm exists, and he must
19 also draw the inference.” Colwell, 763 F.3d at 1066 (quoting Farmer v. Brennan,
20 511 U.S. 825, 837 (1994)) (quotation marks omitted).

21 A prisoner need not prove that he or she was completely denied medical care.
22 Lopez, 203 F.3d at 1132. Rather, deliberate indifference may be “manifested by
23 prison doctors in their response to the prisoner’s needs or by prison guards in
24 intentionally denying or delaying access to medical care or intentionally interfering
25 with the treatment once prescribed.” Estelle, 429 U.S. at 104-05 (footnotes
26 omitted). Mere disagreement with a defendant’s professional judgment concerning
27 what medical care is most appropriate under the circumstances, however, is
28 insufficient to show deliberate indifference. Hamby v. Hammond, 821 F.3d 1085,

1 1092 (9th Cir. 2016) (citation omitted). Hence, the medical care a defendant
2 provided to an inmate amounts to deliberate indifference only if the doctor chose a
3 course of treatment that “was medically unacceptable under the circumstances” and
4 did so “in conscious disregard of an excessive risk to plaintiff’s health.” Colwell,
5 763 F.3d at 1068 (citations and internal quotation marks omitted).

6 Where a plaintiff seeks to hold a prison official personally liable for damages,
7 the plaintiff must establish a causal link between the particular defendant’s
8 deliberate indifference and the constitutional deprivation alleged. Leer v. Murphy,
9 844 F.2d 628, 633-34 (9th Cir. 1988). Proper evaluation of causation involves “a
10 very individualized approach which accounts for the duties, discretion, and means
11 of each defendant.” Id.

12 **IV. DISCUSSION**

13 Here, the Complaint is deficient in at least the following respects:

14 First, the Complaint violates Rule 10 because, among other things, it does not
15 allege claims in sequentially “numbered paragraphs, each limited as far as
16 practicable to a single set of circumstances.” Fed. R. Civ. P. 10(b).

17 Second, even very liberally construed, the allegations of the Complaint (to
18 the extent comprehensible) are insufficient to show that defendant Lee violated the
19 Eighth Amendment. Even assuming plaintiff had a medical condition that was
20 objectively sufficiently serious, and that defendant Lee was aware that such
21 condition posed a substantial risk of serious harm to plaintiff, the non-conclusory
22 allegations in the Complaint do not plausibly suggest that defendant Lee responded
23 to that risk with deliberate indifference. For example, it is unclear from plaintiff’s
24 factual allegations whether any failure by defendant Lee adequately or timely to
25 address plaintiff’s condition was intentional (which could support a Section 1983
26 claim of deliberate indifference) or simply due to inadvertence, negligence, or a
27 reasonable (even if mistaken) belief that plaintiff’s condition was being adequately
28 treated (which would not support a Section 1983 claim). See, e.g., Smith v. Suiter,

1 579 Fed. Appx. 608, 608 (9th Cir. 2014) (“mistakes, negligence, or malpractice by
2 medical professionals are not sufficient to constitute deliberate indifference. . .”) (citing Toguchi v. Chung, 391 F.3d 1051, 1056-60 (9th Cir. 2004)); see also Estelle,
3 429 U.S. at 106 (“Medical malpractice does not become a constitutional violation
4 merely because the victim is a prisoner.”). To the extent the Complaint alleges
5 conduct which is merely “consistent with” defendant Lee’s liability, it again fails
6 adequately to show that plaintiff is entitled to relief under Section 1983. See Iqbal,
7 556 U.S. at 678-79 (citations and quotation marks omitted).

8
9 To the extent plaintiff alleges that defendant Lee should have chosen a
10 different course of treatment to address plaintiff’s condition (*e.g.*, referring plaintiff
11 to a hospital), such allegations are insufficient to state a viable Section 1983 claim.
12 The Complaint does not allege facts which plausibly suggest that the course of
13 treatment defendant Lee chose “was medically unacceptable under the
14 circumstances” much less that Lee chose such treatment “in conscious disregard of
15 an excessive risk to plaintiff’s health.” Colwell, 763 F.3d at 1068 (citations and
16 internal quotation marks omitted). Plaintiff’s mere disagreement with the treatment
17 she received is insufficient to establish deliberate indifference. See Hamby, 821
18 F.3d at 1092 (citation omitted).

19 Finally, the Complaint is otherwise a haphazard assemblage of “notes” from
20 plaintiff’s “personal calendar,” inmate grievances and responses, memos, letters
21 from other inmates, and medical records replete with immaterial background
22 information and duplicative, irrelevant, and conclusory factual assertions which, on
23 the whole, do nothing to plausibly connect any particular act or incident to a
24 specific legal claim against the defendant, and consequently are insufficient to state
25 any viable Section 1983 claim. See Pena v. Gardner, 976 F.2d 469, 471 (9th Cir.
26 1992) (Vague and conclusory allegations of official participation in civil rights
27 violations not sufficient to state a claim under Section 1983) (citation omitted); see
28 also Iqbal, 556 U.S. at 680-84 (“formulaic recitation of the elements” of a claim

1 insufficient under Rule 8) (citations omitted); Knapp v. Hogan, 738 F.3d 1106,
2 1109-10 & n.1 (9th Cir. 2013) (violations of Rule 8’s “short and plain statement”
3 requirement “warrant dismissal”) (citations omitted), cert. denied, 135 S. Ct. 57
4 (2014). “It is not the responsibility of the Court to review a rambling narrative in an
5 attempt to determine the number and nature of a plaintiff’s claims.” Stewart v.
6 Ryan, 2010 WL 1729117, *2 (D. Ariz. Apr. 27, 2010). It is also not the Court’s
7 responsibility to sift through plaintiff’s multiple exhibits in an attempt to glean
8 whether plaintiff has an adequate basis upon which to state a viable claim. Cf.
9 Gordon v. Virtumundo, Inc., 575 F.3d 1040, 1066 (9th Cir. 2009) (“[j]udges are not
10 like pigs, hunting for truffles buried in briefs”) (citation omitted); Garst v.
11 Lockheed-Martin Corp., 328 F.3d 374, 378 (7th Cir.) (“Rule 8(a) requires parties to
12 make their pleadings straightforward, so that judges and adverse parties need not try
13 to fish a gold coin from a bucket of mud.”) (cited with approval in Knapp, 738 F.3d
14 at 1111), cert. denied, 540 U.S. 968 (2003).

15 **V. ORDERS**

16 In light of the foregoing, IT IS HEREBY ORDERED:

17 1. The Complaint is dismissed with leave to amend. If plaintiff intends
18 to pursue this matter, she shall file a First Amended Complaint within fourteen (14)
19 days of the date of this Order which cures the pleading defects set forth herein.¹
20

21
22 ¹Any First Amended Complaint must: (a) be labeled “First Amended Complaint”; (b) be
23 complete in and of itself and not refer in any manner to the original Complaint – *i.e.*, it must
24 include all claims on which plaintiff seeks to proceed (Local Rule 15-2); (c) contain a “short and
25 plain” statement of the claim(s) for relief (Fed. R. Civ. P. 8(a)); (d) make each allegation
26 “simple, concise and direct” (Fed. R. Civ. P. 8(d)(1)); (e) present allegations in sequentially
27 numbered paragraphs, “each limited as far as practicable to a single set of circumstances” (Fed.
28 R. Civ. P. 10(b)); (f) state each claim founded on a separate transaction or occurrence in a
separate count as needed for clarity (Fed. R. Civ. P. 10(b)); (g) set forth clearly the sequence of
events giving rise to the claim(s) for relief; (h) allege specifically what each defendant did and
how that defendant’s conduct specifically violated plaintiff’s civil rights; and (i) not change the
nature of this suit by adding new, unrelated claims or defendants, cf. George v. Smith, 507 F.3d
605, 607 (7th Cir. 2007) (civil rights plaintiff may not file “buckshot” complaints – *i.e.*, a
pleading that alleges unrelated violations against different defendants).

1 2. In the event plaintiff elects not to proceed with this action, she shall
2 sign and return the attached Notice of Dismissal by the foregoing deadline which
3 will result in the voluntary dismissal of this action without prejudice.

4 **3. Plaintiff is cautioned that, absent further order of the Court,**
5 **plaintiff's failure timely to file a First Amended Complaint or Notice of**
6 **Dismissal, may be deemed plaintiff's admission that amendment is futile, and**
7 **may result in the dismissal of this action with or without prejudice on the**
8 **grounds set forth above, on the ground that amendment is futile, for failure**
9 **diligently to prosecute and/or for failure to comply with the Court's Order.**

10 IT IS SO ORDERED.

11 DATED: July 31, 2017



14 HONORABLE JAMES V. SELNA
15 UNITED STATES DISTRICT JUDGE

16 Attachment