

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SA CV 17-0358 PSG (JCG) Date September 29, 2017

Title *Charles Henry Pittman v. Department of Veterans Affairs, et al.*

Present: The Honorable **Jay C. Gandhi, United States Magistrate Judge**

Kristee Hopkins	None Appearing	N/A
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Deputy Clerk	Court Reporter / Recorder	Tape No.
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Attorneys Present for Plaintiff:	Attorneys Present for Defendant:	
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None Appearing	None Appearing	
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Proceedings: (IN CHAMBERS) ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND

I. Introduction

On February 28, 2017, plaintiff Charles Henry Pittman (“Plaintiff”), who is at liberty and proceeding *pro se*, filed a civil rights complaint (“Complaint”) pursuant to 42 U.S.C. § 1983. [Dkt. No. 1.] The Complaint names five defendants: (1) Department of Veterans Affairs (“VA”); (2) Patient Advocate Tamani Moore (“Moore”); (3) Registered Nurse Andrea Montoya (“Montoya”); (4) Dr. Harris; and (5) Dr. Sean F. Buckley (“Dr. Buckley”). (Compl. at 2-3.)¹ Defendants Moore, Montoya, Dr. Harris, and Dr. Buckley are all employed at the Veterans Administration Hospital in Long Beach California. (*Id.*)

As currently pled, the Complaint warrants dismissal, but Plaintiff shall be afforded leave to amend.

II. The Complaint’s Allegations

In sum, Plaintiff alleges that Defendants “did not properly provide essential nor reasonable care when prescribing narcotics or other drugs to Plaintiff,” which he argues was especially dangerous because he has chronic kidney disease. (Compl. at 4.)

He further alleges that Defendant Montoya purposefully “denied [P]laintiff access to needed Mental Health medication, Xanax . . . with intent to punish [P]laintiff.” (*Id.*) Additionally, Plaintiff claims that Dr. Harris “failed to properly screen [his] blood before providing narcotics,” which led to a “dangerous side effect . . . known as withdrawal.” (*Id.* at 5.) Plaintiff also asserts that the “chief M.D.” stated that “withdrawal is dangerous” and should only be done with a doctor’s assistance, but

¹ For ease of reference, the Court uses the CM/ECF pagination in referring to the Complaint.

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Defendants purportedly forced Plaintiff to experience withdrawal in spite of his kidney disease. (*Id.* at 6.)

Based on these allegations, Plaintiff asserts violations of the Eighth Amendment, and seeks compensatory damages in the amount of \$200,000, “[l]egal restrictions to stop forced withdrawal with no offer of treatment or reasonable care,” and “mental health treatment from a non-Veteran’s Administration Physician.” (*Id.* at 7-9.)

III. Legal Standards

The Court may *sua sponte* dismiss, “at any time,” any *in forma pauperis* complaint that is frivolous or malicious, fails to state a claim, or seeks damages from defendants who are immune. *See* 28 U.S.C. § 1915(e)(2).

The dismissal for failure to state a claim “can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). In making such a determination, a complaint’s allegations must be accepted as true and construed in the light most favorable to the plaintiff. *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1990). However, the “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Thus, a complaint must contain “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. A claim has facial plausibility when the plaintiff pleads enough factual content to allow a court “to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

IV. Plaintiff’s Allegations Against the VA Are Deficient

Plaintiff names the VA as a defendant but fails to state *any* claim against it. (*See generally* Compl.)

Therefore, if Plaintiff chooses to amend the Complaint, he should not re-name the VA unless he supports his claim with specific facts describing the actions, omissions, or other conduct by the VA that gave rise to the allegations.

However, to the extent that Plaintiff attempts to make a constitutional challenge to the VA’s determination of veteran disability benefits, Plaintiff is advised that this Court lacks subject matter jurisdiction to review such a claim. As the Ninth Court found, federal district courts lack “jurisdiction over a claim if it requires the district court to review ‘VA decisions that relate to benefits decisions’” *Veterans for Common Sense v. Shinseki*, 678 F.3d 1013, 1025 (9th Cir. 2012) (*en banc*) (internal citation omitted). Instead, jurisdiction belongs “in the Veterans Court and the Federal Circuit.” *Id.* at 1026. “This is true even if the veteran addresses his claim as a constitutional challenge.” *Id.* at 1023.

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V. Plaintiff Fails to State a Claim Under the Eighth Amendment

To state an Eighth Amendment claim for inadequate medical treatment, a plaintiff must prove that a defendant acted with “deliberate indifference to [his] serious medical needs.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006). The plaintiff must first establish a “serious medical need by demonstrating that [the] failure to treat [his] condition could result in further significant injury or the unnecessary and wanton infliction of pain.” *Id.* (citation omitted). The plaintiff must then show that the defendant’s response to the medical need was deliberately indifferent. *Id.*

To show deliberate indifference, a plaintiff must show (a) a purposeful act or failure to respond to the plaintiff’s pain or possible medical need, and (b) harm caused by the indifference. *Id.* Importantly, “[m]ere indifference, negligence, or medical malpractice” is *not* enough. *Broughton v. Cutter Labs.*, 622 F.2d 458, 460 (9th Cir. 1980) (citation omitted). “A defendant must purposefully ignore or fail to respond to a prisoner’s pain or possible medical need in order for deliberate indifference to be established.” *McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir. 1992), *overruled in part on other grounds by WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997).

Here, Plaintiff’s allegations against Defendants are minimal. Plaintiff merely alleges that Defendants committed “medical malpractice” and “did not properly diagnose” or “properly provide . . . reasonable care” when they prescribed him drugs that later caused him to suffer from narcotic withdrawal. (*See* Compl. at 4-8.) However, as the United States Supreme Court held, “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.” *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (emphasis added). Such allegations are insufficient to demonstrate that Defendants ignored, let alone *intentionally* ignored, Plaintiff’s medical needs.

Consequently, Plaintiff has failed to state an Eighth Amendment claim against Defendants. If Plaintiff chooses to amend the Complaint, he should not re-allege this claim unless he has a good faith belief that he can satisfy the standards discussed above.

VII. Leave to File an Amended Complaint

As the Court cannot conclude that amendment to the Complaint would be futile, leave to amend is granted. *See Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995).

Accordingly, **IT IS ORDERED THAT:**

- 1) Within **30 days of the date of this Order**, Plaintiff may submit a First Amended Complaint to cure the deficiencies discussed above. The Clerk of Court is **DIRECTED TO** mail Plaintiff a court-approved form to use for filing the First Amended Complaint. **If Plaintiff**

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fails to use the court-approved form, the Court may strike the First Amended Complaint and dismiss this action.

- 2) If Plaintiff chooses to file a First Amended Complaint, he must comply with Federal Rule of Civil Procedure 8, and contain short, plain statements explaining: (a) the constitutional right Plaintiff believes was violated; (b) the name of the defendant who violated that right; (c) exactly what that defendant did or failed to do; (d) how the action or inaction of that defendant is connected to the violation of Plaintiff's constitutional right; and (e) what specific injury Plaintiff suffered because of that defendant's conduct. *See Fed. R. Civ. P. 8.* If Plaintiff fails to affirmatively link the conduct of the defendant with the specific injury suffered by Plaintiff, the allegation against that defendant will be dismissed for failure to state a claim. Conclusory allegations that a defendant has violated a constitutional right are not acceptable and will be dismissed.
- 3) Plaintiff must clearly designate on the face of the document that it is the "First Amended Complaint," and it must be retyped or rewritten in its entirety on the court-approved form. The First Amended Complaint may not incorporate any part of the Complaint by reference.
- 4) As a rule, any amended complaint supersedes previously filed complaints. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, after amendment, the Court will treat the Complaint as nonexistent. *Id.*

IT IS SO ORDERED.

cc: Parties of Record

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Initials of Clerk	kh		

1 _____ (Full Name)

2 _____ (Address Line 1)

3 _____ (Address Line 2)

4 _____ (Phone Number)

5 Plaintiff in Pro Per

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

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11 _____,) **Case No.:** _____
(To be supplied by the Clerk)

12 **Plaintiff,**)

13 **vs.**) **Civil Rights Complaint Pursuant to**
) **42 U.S.C. § 1983 (non-prisoners)**

14 _____) **Jury Trial Demanded:** Yes No
15 _____)
16 _____)

17 _____)

18 **Defendant(s).**)

19 _____)

20 _____)

21 _____)

22 _____)

(All paragraphs and pages must be numbered.)

I. JURISDICTION

22 1. This court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.
23 Federal question jurisdiction arises pursuant to 42 U.S.C. § 1983.

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II. VENUE

26 2. Venue is proper pursuant to 28 U.S.C. § 1391 because _____

27 _____

28 _____

III. PARTIES

3. Plaintiff _____ resides at:
(your full name)

(your address)

(You should specifically identify each Defendant you intend to sue in a separate, numbered paragraph.)

4. Defendant _____ works at
(full name of Defendant)

(Defendant's place of work)

Defendant's title or position is _____
(Defendant's title or position at place of work)

This Defendant is sued in his/her (check one or both):

- individual capacity official capacity

This Defendant was acting under color of law because: _____

5. Defendant _____ works at
(full name of Defendant)

(Defendant's place of work)

Defendant's title or position is _____
(Defendant's title or position at place of work)

This Defendant is sued in his/her (check one or both):

- individual capacity official capacity

This Defendant was acting under color of law because: _____

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____. Defendant _____ works at
Insert ¶ # (full name of Defendant)

(Defendant's place of work)

Defendant's title or position is _____
(Defendant's title or position at place of work)

This Defendant is sued in his/her (check one or both):

- individual capacity official capacity

This Defendant was acting under color of law because _____

____. Defendant _____ works at
Insert ¶ # (full name of Defendant)

(Defendant's place of work)

Defendant's title or position is _____
(Defendant's title or position at place of work)

This Defendant is sued in his/her (check one or both):

- individual capacity official capacity

This Defendant was acting under color of law because _____

IV. STATEMENT OF FACTS

(Explain what happened in your own words. You do not have to cite legal authority in this section. Be specific about names, dates, and places. Explain what each Defendant did. Remember to number every paragraph.)

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Insert ¶ #

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Insert ¶ #

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Insert ¶ #

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_____. _____
Insert ¶ #

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Insert ¶ #

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Insert ¶ #

V. CLAIMS

Claim #1

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3 _____. Plaintiff realleges and incorporates by reference all of the paragraphs above.
4 *Insert ¶ #*

5 _____. Plaintiff has a claim under 42 U.S.C. §1983 for violation of the following
6 *Insert ¶ #* federal constitutional or statutory civil right:
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10 _____. The above civil right was violated by the following Defendants:
11 *Insert ¶ #*
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15 *(You may list facts supporting your claim. Be specific about how each Defendant violated this particular civil right.)*

16 _____.
17 *Insert ¶ #*
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24 _____. As a result of the Defendant's violation of the above civil right, Plaintiff
25 *Insert ¶ #* was harmed in the following way:
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Claim # ()
(insert Claim#)

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2
3 . Plaintiff realleges and incorporates by reference all of the paragraphs above.
Insert ¶ #

4 *(List any other legal claim you have that is related to your civil rights claim.)*

5 .
Insert ¶ #

6 _____
7 _____
8 _____
9 _____
10 _____

11 . Plaintiff alleges the above claim against the following Defendant(s):
Insert ¶ #

12 _____
13 _____
14 _____

15 *(You may list facts supporting your claim. Be specific about how each Defendant
16 violated the rights giving rise to this claim.)*

17 .
Insert ¶ #

18 _____
19 _____
20 _____
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23 _____

24 . As a result of the Defendant's violation of the rights giving rise to this
25 *Insert ¶ #* claim, Plaintiff was harmed in the following way:

26 _____
27 _____
28 _____

VI. REQUEST FOR RELIEF

WHEREFORE, the Plaintiff requests:

_____.
Insert ¶ #

Dated: _____

Sign: _____

Print Name: _____