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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MAURICE I. BUTLER,

Plaintiff,

v.

JONG YEOUNG MOON , M.D. et al.,

Defendants.

CASE NO. 1:09-cv-02074-MJS (PC)

COMPLAINT DISMISSED WITH LEAVE TO AMEND

(ECF No. 1)

AMENDED COMPLAINT DUE WITHIN THIRTY DAYS

_____ /

SCREENING ORDER

I. PROCEDURAL HISTORY

Plaintiff Maurice I. Butler ("Plaintiff") is an inmate in the custody of the California Department of Corrections and Rehabilitation, and is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on November 18, 2009 in the Central District of California; it has since been transferred to this Court. (ECF Nos. 1, 5, & 6.) No other parties have appeared. Plaintiff's Complaint is now before this Court for screening.

1 For the reasons set forth below, the Court finds that Plaintiff has failed to state a
2 claim upon which relief may be granted.

3 **II. SCREENING REQUIREMENTS**

4 The Court is required to screen complaints brought by prisoners seeking relief
5 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
6 § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has
7 raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which
8 relief may be granted, or that seek monetary relief from a defendant who is immune from
9 such relief. 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee, or any portion
10 thereof, that may have been paid, the court shall dismiss the case at any time if the court
11 determines that . . . the action or appeal . . . fails to state a claim upon which relief may be
12 granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

13 A complaint must contain “a short and plain statement of the claim showing that the
14 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
15 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
16 mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949
17 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set
18 forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its
19 face.’” Iqbal, 129 S.Ct. at 1949 (quoting Twombly, 550 U.S. at 555). While factual
20 allegations are accepted as true, legal conclusions are not. Iqbal, 129 S.Ct. at 1949.

21 **III. SUMMARY OF COMPLAINT**

22 Plaintiff suffers from glaucoma and foot and shoulder problems, among other
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1 ailments. He alleges he received inadequate medical care for these conditions. Plaintiff
2 names the following individuals as Defendants: Jong Yeoung Moon, M.D.; William
3 McGuinness, M.D.; J. Wang, M.D.; and Loadholt, R.N. Plaintiff seeks compensatory,
4 consequential, future, unliquidated, and punitive damages.
5

6 More specifically, Plaintiff alleges:

7 **A. Eye Problems**

8 On April 8, 2008, Plaintiff was seen by Defendant Moon, his primary healthcare
9 provider. Plaintiff informed Dr. Moon that he needed an appointment with an eye specialist
10 in three weeks so he could have the pressure released in one eye (as it had earlier been
11 released in the other eye). Plaintiff did not, however, get to see the eye specialist until
12 November 2008. During the intervening eight months, Plaintiff saw Dr. Moon several times
13 (May 13, June 27, August 25 and September 3, 2008) primarily for asthma treatment, but
14 always complained about his eyes. Dr. Moon repeatedly told Plaintiff that he could do
15 nothing about his glaucoma. He also refused to tell Plaintiff to stop using prescribed eye
16 drops which Plaintiff felt increased his pain.
17

18 At his appointment with the specialist in November 2008, Plaintiff refused to be
19 treated for the glaucoma, electing instead to receive treatment for dry eye syndrome. He
20 was to have a follow-up appointment with the specialist in two weeks, but was not taken
21 to the specialist for over 90 days. Plaintiff was seen by the specialist on May 15, 2009 and
22 July 10, 2009; however, as of October 27, 2009, he had received no additional treatment.
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24 **Foot Problems**

25 Plaintiff saw a nurse on June 8, August 3, August 12, and August 29, 2008 for foot
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1 and shoulder pain. The nurse recommended Plaintiff be seen by a doctor. At his
2 appointment with Dr. Moon, Dr. Moon asked Plaintiff which foot hurt worse. He took an x-
3 ray of that foot, but refused to x-ray the other foot. Another doctor ordered that Plaintiff's
4 other foot be x-rayed on June 27, 2008. The radiology report showed evidence of an acute
5 displaced fracture or dislocation. Dr. Moon did not do any follow-up.
6

7 On August 18, 2008, Plaintiff was seen by a podiatrist who recommended shoe
8 inserts temporarily and eventually boots. Plaintiff received no inserts for months, and then
9 received the wrong type. Eventually, he received the wrong size of boots and had to wait
10 months for the correct size. Plaintiff now walks a lot slower and wobbles because of the
11 deformity of his feet.
12

13 **Shoulder Problems**

14 On September 18, 2008, Plaintiff had an x-ray and MRI on his right shoulder. He
15 had been receiving pain medication since then. In December 2008, Plaintiff was seen by
16 a specialist who recommended surgery. Plaintiff had not received shoulder surgery as of
17 the date of drafting of this Complaint.
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19 **IV. ANALYSIS**

20 The Civil Rights Act under which this action was filed provides:

21 Every person who, under color of [state law] . . . subjects, or
22 causes to be subjected, any citizen of the United States . . . to
23 the deprivation of any rights, privileges, or immunities secured
24 by the Constitution . . . shall be liable to the party injured in an
action at law, suit in equity, or other proper proceeding for
redress.

25 42 U.S.C. § 1983. "Section 1983 . . . creates a cause of action for violations of the federal
26 Constitution and laws." Sweaney v. Ada County, Idaho, 119 F.3d 1385, 1391 (9th Cir.
27

1 1997) (internal quotations omitted).

2 **A. Medical Care**

3 Plaintiff apparently feels he received inadequate medical care in violation of the
4 Eighth Amendment.

5
6 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an
7 inmate must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439
8 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)). The
9 two part test for deliberate indifference requires the plaintiff to show (1) “‘a serious medical
10 need’ by demonstrating that ‘failure to treat a prisoner’s condition could result in further
11 significant injury or the unnecessary and wanton infliction of pain,’” and (2) “‘the defendant’s
12 response to the need was deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting
13 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds,
14 WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc) (internal quotations
15 omitted)). Deliberate indifference is shown by “a purposeful act or failure to respond to a
16 prisoner’s pain or possible medical need, and harm caused by the indifference.” Jett, 439
17 F.3d at 1096 (citing McGuckin, 974 F.2d at 1060). In order to state a claim for violation of
18 the Eighth Amendment, a plaintiff must allege sufficient facts to support a claim that the
19 named defendants “[knew] of and disregard[ed] an excessive risk to [Plaintiff’s] health . .
20 . .” Farmer v. Brennan, 511 U.S. 825, 837 (1994).

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23 In applying this standard, the Ninth Circuit has held that before it can be said that
24 a prisoner’s civil rights have been abridged, “the indifference to his medical needs must be
25 substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this
26 cause of action.” Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980)
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1 (citing Estelle, 429 U.S. at 105-06). “[A] complaint that a physician has been negligent in
2 diagnosing or treating a medical condition does not state a valid claim of medical
3 mistreatment under the Eighth Amendment. Medical malpractice does not become a
4 constitutional violation merely because the victim is a prisoner.” Estelle, 429 U.S. at 106;
5 see also Anderson v. County of Kern, 45 F.3d 1310, 1316 (9th Cir. 1995); McGuckin, 974
6 F.2d at 1050, overruled on other grounds, WMX, 104 F.3d at 1136. Even gross negligence
7 is insufficient to establish deliberate indifference to serious medical needs. See Wood v.
8 Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990).

9
10 Also, “a difference of opinion between a prisoner-patient and prison medical
11 authorities regarding treatment does not give rise to a § 1983 claim.” Franklin v. Oregon,
12 662 F.2d 1337, 1344 (9th Cir. 1981) (internal citation omitted). To prevail, Plaintiff “must
13 show that the course of treatment the doctors chose was medically unacceptable under
14 the circumstances . . . and . . . that they chose this course in conscious disregard of an
15 excessive risk to plaintiff’s health.” Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1986)
16 (internal citations omitted). A prisoner’s mere disagreement with diagnosis or treatment
17 does not support a claim of deliberate indifference. Sanchez v. Vild, 891 F.2d 240, 242
18 (9th Cir. 1989).

21 Eye Problems

22 Plaintiff alleges that Dr. Moon failed and refused to treat Plaintiff’s glaucoma and,
23 further, negligently prescribed an asthma inhaler containing steroids with potentially
24 dangerous side-effects for glaucoma patients.

25 Plaintiff fails to allege facts which would indicate Dr. Moon showed a conscious
26 disregard of excessive risk and expose the doctor to liability under Eighth Amendment.
27

1 Plaintiff states that he was supposed to have another pressure releasing procedure within
2 two or three weeks after his first one, but, as far as the Court can discern, it has not yet
3 occurred. Plaintiff claims he told Moon, on April 8, 2008, that he needed an appointment
4 for the second procedure and attributes the lack of follow-up to Dr. Moon. An allegation
5 that Moon failed to schedule follow-up appointments is not sufficient to state a claim unless
6 Plaintiff can demonstrate that Dr. Moon was not merely negligent, but deliberately or
7 callously chose not to schedule a medical appointment for Plaintiff knowing that doing so
8 would expose Plaintiff to an excessive risk of harm. Plaintiff has not alleged this. Plaintiff's
9 allegations here and with regard to prescribing the steroid inhaler attribute nothing more
10 than negligence to Dr. Moon. Though, as noted, negligence alone is not enough to state
11 a claim, even a negligence claim would be somewhat inconsistent with the fact that Plaintiff
12 was seen multiple times by several different doctors and specialists, yet none apparently
13 saw fit to act differently than Dr. Moon.

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16 Plaintiff also fails to allege that he suffered any additional harm as a result of the
17 delay. In fact, when Plaintiff saw the specialist eight months later, he elected to forego the
18 pressure releasing procedure. This suggests that the delay did not cause any further harm
19 and, apparently in the Plaintiff's mind, is not likely to cause harm in the future.

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21 In summary, the Court finds that Plaintiff has failed to stated a claim against Dr.
22 Moon for inadequate medical care. The claim will be dismissed leave to amend to enable
23 Plaintiff to undertake to state a claim consistent with applicable law if the facts support it.

24 Foot Problems

25 Plaintiff has also fails to state a claim against any named Defendants for inadequate
26 medical care in relation to his foot problems. Plaintiff alleges that Dr. Moon failed to treat
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1 his feet and failed to follow-up on treatment recommended by the specialist. However, it
2 does appear that Plaintiff received treatment: He saw a nurse at least four times about his
3 feet, Dr. Moon took an x-ray of one foot, another doctor took an x-ray of the other foot,
4 Plaintiff saw the podiatrist, and eventually received shoe inserts and other
5 accommodations. A failure to provide Plaintiff the care he believes most appropriate when
6 he feels it should have been provided does not reach the level of a constitutional violation.
7

8 As pleaded, Plaintiff has not alleged deliberate indifference on the part of Dr. Moon.
9 Dr. Moon's request that Plaintiff be seen by a specialist is inconsistent with deliberate
10 indifference. Plaintiff alleges substantial delay in receiving the recommended shoe
11 inserts, but does not demonstrate how or if Moon knew that the specialist had
12 recommended these devices and callously disregarded Plaintiff's need for them. Here too
13 Plaintiff fails to state a claim. This claim is dismissed with leave to amend.
14

15 Shoulder Problems

16 Again, Plaintiff fails to demonstrate that any Defendant knew of and recklessly
17 disregarded the recommendation for surgery. Plaintiff simply states that after the
18 specialist's recommendation was sent to Corcoran, no action was taken in response.
19 Plaintiff does not state that any of the Defendants had knowledge of the recommendation
20 or were deliberately indifferent to it. Thus, Plaintiff's shoulder claim is dismissed; he will
21 be given leave to amend.
22

23 Defendants Loadholt, Wang, and McGuiness

24 Plaintiff repeatedly states that Loadholt, Wang, and McGuiness failed to secure
25 follow-up appointments and treatment for Plaintiff for his many ailments. Plaintiff does not
26 allege that said Defendants were aware that Plaintiff needed follow-up appointments and
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1 knowingly or callously failed to make those appointments knowing of the excessive risk to
2 Plaintiff's health from such failure and that Plaintiff suffered harm as a result. Thus,
3 Plaintiff's claims against these three defendant's Loadholt, Wang, and McGuiness are
4 dismissed, albeit with leave to amend.
5

6 **B. Policies and Practices**

7 Plaintiff may be alleging that Defendants violated prison policy or practices in failing
8 to ensure proper follow-up treatment. An allegation that a defendant violated a prison
9 policy is not sufficient to state a constitutional claim. See Gardner v. Howard, 109 F.3d
10 427, 430 (8th Cir. 1997) (no Section 1983 liability for violation of prison policy). "In order
11 to set forth a claim under 42 U.S.C. § 1983, an inmate must show a violation of his
12 constitutional rights, not merely a violation of prison policy." Moore v. Schuetzle, 486
13 F.Supp.2d 969, 989 (D.N.D. 2007). Accordingly, Plaintiff's allegation that Defendants
14 violated Section 1983 by failing to comply with prison policies or practices fails to state a
15 claim upon which relief could be granted. Plaintiff will have leave to amend this claim, but
16 may wish to consider whether it more clearly fits as part and parcel of the deficient medical
17 care claim. If so, Plaintiff may be well-advised to concentrate instead on the medical claim.
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20 **C. Personal Participation and Supervisory Liability**

21 Plaintiff suggests that Defendants Loadholt, Wang, and McGuiness had
22 responsibility for securing follow-up appointments and those appointments were not set.
23 He does not otherwise attribute any wrongful act or omission to them. It does not appear
24 that any of them actually treated or should have treated Perhaps, Plaintiff seeks to hold
25 them liable for the conduct of their subordinates.
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1 Under Section 1983, Plaintiff must demonstrate that each named Defendant
2 personally participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930,
3 934 (9th Cir. 2002). The Supreme Court has emphasized that the term “supervisory
4 liability,” loosely and commonly used by both courts and litigants alike, is a misnomer.
5 Iqbal, 129 S.Ct. at 1949. “Government officials may not be held liable for the
6 unconstitutional conduct of their subordinates under a theory of respondeat superior.” Id.
7 at 1948. Rather, each government official, regardless of his or her title, is only liable for
8 his or her own misconduct, and therefore, Plaintiff must demonstrate that each defendant,
9 through his or her own individual actions, violated Plaintiff’s constitutional rights. Id. at
10 1948-49.
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13 When examining the issue of supervisor liability, it is clear that the supervisors are
14 not subject to vicarious liability, but are liable only for their own conduct. Jeffers v. Gomez,
15 267 F.3d 895, 915 (9th Cir. 2001); Wesley v. Davis, 333 F.Supp.2d 888, 892 (C.D.Cal.
16 2004). In order to establish liability against a supervisor, a plaintiff must allege facts
17 demonstrating (1) personal involvement in the constitutional deprivation, or (2) a sufficient
18 causal connection between the supervisor’s wrongful conduct and the constitutional
19 violation. Jeffers, 267 F.3d at 915; Wesley, 333 F.Supp.2d at 892. The sufficient causal
20 connection may be shown by evidence that the supervisor implemented a policy so
21 deficient that the policy itself is a repudiation of constitutional rights. Wesley, 333
22 F.Supp.2d at 892 (internal quotations omitted). However, an individual’s general
23 responsibility for supervising the operations of a prison is insufficient to establish personal
24 involvement. Id. (internal quotations omitted).
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26
27 Supervisor liability under Section 1983 is a form of direct liability. Munoz v.

1 Kolender, 208 F.Supp.2d 1125, 1149 (S.D.Cal. 2002). Under direct liability, Plaintiff must
2 show that Defendant breached a duty to him which was the proximate cause of his injury.
3 Id. “The requisite causal connection can be established . . . by setting in motion a series
4 of acts by others which the actor knows or reasonably should know would cause others to
5 inflict the constitutional injury.” Id. (quoting Johnson v. Duffy, 588 F.2d 740, 743-744 (9th
6 Cir. 1978)). However, “where the applicable constitutional standard is deliberate
7 indifference, a plaintiff may state a claim for supervisory liability based upon the
8 supervisor’s knowledge of and acquiescence in unconstitutional conduct by others.” Star
9 v. Baca, ___ F.3d ___, 2011 WL 477094, *4 (9th Cir. Feb. 11, 2011).

10
11 Plaintiff has not alleged facts demonstrating that the named Defendants personally
12 acted to violate his rights. Plaintiff needs to specifically link each Defendant to a
13 constitutional violation Plaintiff shall be given the opportunity to file an amended complaint
14 curing the deficiencies in this respect.

15
16 **V. CONCLUSION AND ORDER**

17 The Court finds that Plaintiff’s Complaint fails to state any Section 1983 claims upon
18 which relief may be granted. The Court will provide Plaintiff time to file an amended
19 complaint to address the potentially correctable deficiencies noted above. See Noll v.
20 Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). In his Amended Complaint, Plaintiff must
21 demonstrate that the alleged incident or incidents resulted in a deprivation of his
22 constitutional rights. Iqbal, 129 S.Ct. at 1948-49. Plaintiff must set forth “sufficient factual
23 matter . . . to ‘state a claim that is plausible on its face.’” Iqbal, 129 S.Ct. at 1949 (quoting
24 Twombly, 550 U.S. at 555). Plaintiff must also demonstrate that each defendant personally
25 participated in the deprivation of his rights. Jones, 297 F.3d at 934.
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1 Although he has been given the opportunity to amend, it is not for the purposes of
2 adding new defendants or claims. Plaintiff should focus the amended complaint on claims
3 and defendants relating solely to issues arising out of the incidents discussed herein.
4

5 Finally, Plaintiff is advised that Local Rule 220 requires that an amended complaint
6 be complete in itself without reference to any prior pleading. As a general rule, an
7 amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55,
8 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no longer
9 serves any function in the case. Therefore, in an amended complaint, as in an original
10 complaint, each claim and the involvement of each defendant must be sufficiently alleged.
11 The amended complaint should be clearly and boldly titled "First Amended Complaint,"
12 refer to the appropriate case number, and be an original signed under penalty of perjury.
13

14 Based on the foregoing, it is HEREBY ORDERED that:

- 15 1. Plaintiff's Complaint is dismissed for failure to state a claim, with leave to file
16 an amended complaint within thirty (30) days from the date of service of this
17 order;
- 18 2. Plaintiff shall caption the amended complaint "First Amended Complaint" and
19 refer to the case number 1:09-cv-2074-MJS (PC); and
- 20 3. If Plaintiff fails to comply with this order, this action will be dismissed for
21 failure to state a claim upon which relief may be granted.
22

23 IT IS SO ORDERED.

24
25 Dated: March 21, 2011

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE