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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOHN RAY DYNES,

CASE NO. 1:10-cv-00653-SKO PC

Plaintiff,

ORDER DISMISSING COMPLAINT, WITH
LEAVE TO FILE AMENDED COMPLAINT
WITHIN THIRTY (30) DAYS

v.

FRESNO DETENTION CENTER
MEDICAL STAFF DEPARTMENT,

(Doc. 1)

Defendant.

_____/

Plaintiff John Ray Dynes (“Plaintiff”) is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff was incarcerated at the Fresno County Detention Facility at the time of the events described in his complaint. Plaintiff is suing under Section 1983 for the violation of his rights under the Eighth Amendment. Plaintiff names the “Fresno County Detention Center Medical Staff Department” as defendant (“Defendant”). For the reasons set forth below, the Court finds that Plaintiff’s complaint fails to state any cognizable claims. The Court will dismiss Plaintiff’s complaint with leave to file an amended complaint which cures the deficiencies identified in this order.

I. Screening Requirement

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally

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1 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
2 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

3 In determining whether a complaint fails to state a claim, the Court uses the same pleading
4 standard used under Federal Rule of Civil Procedure 8(a). Under Rule 8(a), a complaint must
5 contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed.
6 R. Civ. P. 8(a)(2). “[T]he pleading standard Rule 8 announces does not require ‘detailed factual
7 allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me
8 accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v.
9 Twombly, 550 U.S. 544, 555 (2007)). “[A] complaint must contain sufficient factual matter,
10 accepted as true, to ‘state a claim to relief that is plausible on its face.’” Id. (quoting Twombly, 550
11 U.S. at 570). “[A] complaint [that] pleads facts that are ‘merely consistent with’ a defendant’s
12 liability . . . ‘stops short of the line between possibility and plausibility of entitlement to relief.’” Id.
13 (quoting Twombly, 550 U.S. at 557). Further, although a court must accept as true all factual
14 allegations contained in a complaint, a court need not accept a plaintiff’s legal conclusions as true.
15 Id. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
16 statements, do not suffice.” Id. (quoting Twombly, 550 U.S. at 555).

17 **II. Background**

18 Plaintiff claims that there is a bullet stuck in his groin that has caused swelling and pain.
19 Plaintiff alleges that he has filed numerous appeals requesting medical help. Plaintiff does not allege
20 what response he got from the appeals, but concludes that his Eighth Amendment rights have been
21 violated.

22 **III. Discussion**

23 Plaintiff claims that he is suffering pain from a bullet stuck in his groin. The Eighth
24 Amendment¹ prohibits the imposition of cruel and unusual punishments and “embodies ‘broad and
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26 ¹It is unclear whether Plaintiff was detained at the Fresno County Detention Facility as a pre-trial detainee
27 or as a convicted prisoner. The Court will analyze Plaintiff’s claims under the Eighth Amendment, which applies to
28 convicted prisoners. If Plaintiff was a pre-trial detainee, the same standards would apply. See Frost v. Agnos, 152
F.3d 1124, 1128 (9th Cir. 1998) (“Because pretrial detainees’ rights under the Fourteenth Amendment are
comparable to prisoners’ rights under the Eighth Amendment . . . we apply the same standards.”).

1 idealistic concepts of dignity, civilized standards, humanity and decency.” Estelle v. Gamble, 429
2 U.S. 97, 102 (1976) (quoting Jackson v. Bishop, 404 F.2d 571, 579 (8th Cir. 1968)). A prison
3 official violates the Eighth Amendment only when two requirements are met: (1) the objective
4 requirement that the deprivation is “sufficiently serious,” and (2) the subjective requirement that the
5 prison official has a “sufficiently culpable state of mind.” Farmer v. Brennan, 511 U.S. 825, 834
6 (1994) (quoting Wilson v. Seiter, 501 U.S. 294, 298 (1991)).

7 The objective requirement that the deprivation be “sufficiently serious” is met where the
8 prison official’s act or omission results in the denial of “the minimal civilized measure of life’s
9 necessities.” Id. (quoting Rhodes v. Chapman, 452 U.S. 337, 347 (1981)). The subjective
10 “sufficiently culpable state of mind” requirement is met when a prison official acts with “deliberate
11 indifference” to inmate health or safety. Id. (quoting Wilson, 501 U.S. at 302-303). A prison official
12 acts with deliberate indifference when he or she “knows of and disregards an excessive risk to inmate
13 health or safety.” Id. at 837. “[T]he official must both be aware of facts from which the inference
14 could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.”
15 Id.

16 “[D]eliberate indifference to a prisoner’s serious illness or injury states a cause of action
17 under § 1983.” Estelle, 429 U.S. at 105. In order to state an Eighth Amendment claim based on
18 deficient medical treatment, a plaintiff must show: (1) a serious medical need; and (2) a deliberately
19 indifferent response by the defendant. Conn v. City of Reno, 572 F.3d 1047, 1055 (9th Cir. 2009)
20 (quoting Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)). A serious medical need is shown by
21 alleging that the failure to treat the plaintiff’s condition could result in further significant injury, or
22 the unnecessary and wanton infliction of pain. Id. A deliberately indifferent response by the
23 defendant is shown by a purposeful act or failure to respond to a prisoner’s pain or possible medical
24 need and harm caused by the indifference. Id. In order to constitute deliberate indifference, there
25 must be an objective risk of harm and the defendant must have subjective awareness of that harm.
26 Id. However, “a complaint that a physician has been negligent in diagnosing or treating a medical
27 condition does not state a valid claim of medical mistreatment under the Eighth Amendment.
28 Medical malpractice does not become a constitutional violation merely because the victim is a

1 prisoner.” Estelle v. Gamble, 429 U.S. 97, 106 (1976). Isolated occurrences of neglect do not
2 constitute deliberate indifference to serious medical needs. See Jett v. Penner, 439 F.3d 1091, 1096
3 (9th Cir. 2006); McGuckin v. Smith, 974 F.2d 1050, 1060 (9th Cir. 1992); O’Loughlin v. Doe, 920
4 F.2d 614, 617 (9th Cir. 1990).

5 Plaintiff has not described what response, if any, he received from his numerous requests for
6 medical treatment. Plaintiff does not describe what treatment, if any, he received from jail officials
7 or described how the treatment he received was deficient. Plaintiff has attached a copy of an inmate
8 grievance to his complaint that states that he has been seen numerous times by medical staff and has
9 never informed any staff members about a bullet. The grievance also indicates that Plaintiff has been
10 receiving pain medication. Plaintiff does not identify what further medical treatment he needs.
11 Further, Plaintiff has not alleged any facts regarding any jail official’s deliberate indifference.
12 Plaintiff has not alleged that any jail official was aware of an excessive risk of serious injury if
13 Plaintiff did not receive medical treatment and deliberately disregarded that risk.

14 Plaintiff fails to state any cognizable claims under Section 1983. Plaintiff has not alleged
15 how his medical treatment was deficient. Further, the Court notes that the only entity named as a
16 defendant is the “Fresno Detention Center Medical Staff Department.” Assuming that the
17 department is a municipal entity, Plaintiff must allege facts that support liability under Monell.
18 Under Monell v. New York City Dept. of Social Servs., 436 U.S. 658 (1978), a municipality may
19 be subject to suit under Section 1983 when the execution of the municipality’s policy of custom
20 inflicts an injury actionable under Section 1983. Monell, 436 U.S. at 694-95. Plaintiff has not
21 identified any official policy or custom of the “Fresno Detention Center Medical Staff Department”
22 and therefore fails to state any claims against the department.

23 **IV. Conclusion and Order**

24 The Court has screened Plaintiff’s complaint and finds that it does not state any claims upon
25 which relief may be granted under Section 1983. The Court will provide Plaintiff with the
26 opportunity to file an amended complaint curing the deficiencies identified by the court in this order.
27 See Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2007) (recognizing longstanding rule that leave
28 to amend should be granted even if no request to amend was made unless the court determines that

1 the pleading could not possibly be cured by the allegation of other facts); Noll v. Carlson, 809 F.2d
2 1446, 1448 (9th Cir. 1987) (pro se litigant must be given leave to amend his or her complaint unless
3 it is absolutely clear that the deficiencies of the complaint could not be cured by amendment).
4 Plaintiff is cautioned that he may not add unrelated claims involving different defendants in his
5 amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

6 If Plaintiff elects to amend, his amended complaint should be brief. Fed. R. Civ. P. 8(a).
7 Plaintiff must identify how each individual defendant caused the deprivation of Plaintiff's
8 constitutional or other federal rights. "The inquiry into causation must be individualized and focus
9 on the duties and responsibilities of each individual defendant whose acts or omissions are alleged
10 to have caused a constitutional deprivation." Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988).
11 With respect to exhibits, while they are permissible if incorporated by reference, Fed. R. Civ. P.
12 10(c), they are not necessary in the federal system of notice pleading, Fed. R. Civ. P. 8(a). In other
13 words, it is not necessary at this stage to submit evidence to prove the allegations in Plaintiff's
14 complaint because at this stage Plaintiff's factual allegations will be accepted as true.

15 Although Plaintiff's factual allegations will be accepted as true and that "the pleading
16 standard Rule 8 announces does not require 'detailed factual allegations,'" "a complaint must contain
17 sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S.
18 544, 555 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that
19 allows the court to draw the reasonable inference that the defendant is liable for the misconduct
20 alleged." Id. (citing Twombly, 550 U.S. at 556).

22 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
23 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567
24 (9th Cir. 1987), and must be "complete in itself without reference to the prior or superceded
25 pleading," Local Rule 220. Plaintiff is warned that "[a]ll causes of action alleged in an original
26 complaint which are not alleged in an amended complaint are waived." King, 814 F.2d at 567 (citing
27 London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at

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1 1474. In other words, even the claims that were properly stated in the original complaint must be
2 completely stated again in the amended complaint.

3 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 4 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a claim;
- 5 2. The Clerk's Office shall send Plaintiff a complaint form;
- 6 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
7 amended complaint;
- 8 4. Plaintiff may not add any new, unrelated claims to this action via his amended
9 complaint and any attempt to do so will result in an order striking the amended
10 complaint; and
- 11 5. If Plaintiff fails to file an amended complaint, the Court will recommend that this
12 action be dismissed, with prejudice, for failure to state a claim.

13
14 IT IS SO ORDERED.

15 **Dated:** November 10, 2010

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE