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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAUL ANGELO CASERES,	CASE NO. 1:10-cv-01239-OWW-GBC (PC)
Plaintiff,	ORDER DISMISSING COMPLAINT WITH
v.	LEAVE TO AMEND
C. A. TERHUNE, et al.,	(ECF No. 1)
Defendants.	FIRST AMENDED COMPLAINT DUE
	/ WITHIN THIRTY DAYS

SCREENING ORDER

I. PROCEDURAL HISTORY

Plaintiff Paul Angelo Caseres ("Plaintiff") 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 July 9, 2010. (ECF No. 1.) No other parties have appeared.

Plaintiff's Complaint is now before the Court for screening. For the reasons set forth below, the Court finds that Plaintiff has failed to state any claims upon which relief may be granted.

II. SCREENING REQUIREMENTS

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 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from

1 such relief. 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee, or any portion
2 thereof, that may have been paid, the court shall dismiss the case at any time if the court
3 determines that . . . the action or appeal . . . fails to state a claim upon which relief may be
4 granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

5 A complaint must contain “a short and plain statement of the claim showing that the
6 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
7 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
8 mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949
9 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set
10 forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its
11 face.’” Iqbal, 129 S.Ct. at 1949 (quoting Twombly, 550 U.S. at 555). While factual
12 allegations are accepted as true, legal conclusions are not. Iqbal, 129 S.Ct. at 1949.

13 **III. SUMMARY OF COMPLAINT**

14 Plaintiff alleges violations of his Eighth Amendment right to adequate medical care.
15 Plaintiff names the following individuals as Defendants: Secretary Director, C. A. Terhune,
16 Ms. Wendy Still, Enenmoh, L. Peters, M. Paat, California Department of Corrections and
17 Rehabilitation, CDCR Medical Department, Medical Authorization Review Committee, and
18 Office of Financial Management and Support Services.

19 Plaintiff alleges the following: On November 10, 2005, Plaintiff was injured. He had
20 hip replacement surgery on his left hip on July 20, 2009. It was recommended that he also
21 have the right hip replaced; however, Defendant Enenmoh blocked his access to having
22 the right hip replacement. Defendant Paat blocked his access to doctors. Defendant
23 Peters blocked his access to pain management.

24 Plaintiff seeks injunctive relief, and punitive and compensatory damages.

25 **IV. ANALYSIS**

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

27 Every person who, under color of [state law] . . . subjects, or
28 causes to be subjected, any citizen of the United States . . . to
the deprivation of any rights, privileges, or immunities secured

1 by the Constitution . . . shall be liable to the party injured in an
2 action at law, suit in equity, or other proper proceeding for
redress.

3 42 U.S.C. § 1983. “Section 1983 . . . creates a cause of action for violations of the federal
4 Constitution and laws.” Sweaney v. Ada County, Idaho, 119 F.3d 1385, 1391 (9th Cir.
5 1997) (internal quotations omitted).

6 **A. Medical Claim**

7 Plaintiff asserts that Defendants were deliberately indifferent to his serious medical
8 needs in violation of the Eighth Amendment.

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

24 The objective component of deliberate indifference requires the showing of a
25 serious medical need. “A ‘serious’ medical need exists if the failure to treat a prisoner’s
26 condition could result in further significant injury or the ‘unnecessary and wanton infliction
27 of pain’.” McGuckin, 974 F.2d at 1059 (9th Cir. 1992) (quoting Estelle, 429 U.S. at 104);
28 see also Jett, 439 F.3d at 1096. “This is true whether the indifference is manifested by

1 prison doctors in their response to the prisoner's needs or by prison guards in intentionally
2 denying or delaying access to medical care or intentionally interfering with treatment once
3 prescribed." Estelle, 429 U.S. at 104-105. The objective element requires proof that the
4 prisoner's serious medical needs were not timely and properly treated.

5 The subjective component of deliberate indifference considers the nature of the
6 defendant's response to the serious medical need and whether the defendant had a
7 culpable mental state, which is "'deliberate indifference' to a substantial risk of serious
8 harm." Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998) (quoting Farmer, 511 U.S. at
9 835). "[T]he official must both be aware of the facts from which the inference could be
10 drawn that a substantial risk of serious harm exists, and he must also draw the inference."
11 Farmer, 511 U.S. at 837. "[T]he official's conduct must have been 'wanton,' which turns
12 not upon its effect on the prisoner, but rather, upon the constraints facing the official."
13 Frost, 152 F.3d at 1128 (quoting Wilson v. Seiter, 501 U.S. 294, 302-303 (1991)). "This
14 second prong--defendant's response to the need was deliberately indifferent--is satisfied
15 by showing (a) a purposeful act or failure to respond to a prisoner's pain or possible
16 medical need and (b) harm caused by the indifference." Jett, 439 F.3d at 1096 (citing
17 McGuckin, 974 F.2d at 1060). "A prisoner need not show his harm was substantial;
18 however, such would provide additional support for the inmate's claim that the defendant
19 was deliberately indifferent to his needs." Id. Indications of a serious medical need include
20 "[t]he existence of an injury that a reasonable doctor or patient would find important and
21 worthy of comment or treatment; the presence of a medical condition that significantly
22 affects an individual's daily activities; or the existence of chronic and substantial pain."
23 McGuckin, 974 F.2d at 1059-60 (citing Wood v. Housewright, 900 F.2d 1332, 1337-41 (9th
24 Cir. 1990)).

25 If the claim alleges mere delay of treatment, the inmate must establish that the delay
26 resulted in some harm. McGuckin, 974 F.2d at 1060 (citing Shapley v. Nevada Board of
27 State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir.1985) (per curiam)). The delay need not
28 cause permanent injury. McGuckin, 974 F.2d at 1060; see also Hudson v. McMillian, 503

1 U.S. 1, 10 (1992). Unnecessary infliction of pain is sufficient to satisfy this requirement.

2 Id.

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

15 Also, "a difference of opinion between a prisoner-patient and prison medical
16 authorities regarding treatment does not give rise to a § 1983 claim." Franklin v. Oregon,
17 662 F.2d 1337, 1344 (9th Cir. 1981) (internal citation omitted). To prevail, Plaintiff "must
18 show that the course of treatment the doctors chose was medically unacceptable under
19 the circumstances . . . and . . . that they chose this course in conscious disregard of an
20 excessive risk to plaintiff's health." Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1986)
21 (internal citations omitted). A prisoner's mere disagreement with diagnosis or treatment
22 does not support a claim of deliberate indifference. Sanchez v. Vild, 891 F.2d 240, 242
23 (9th Cir. 1989).

24 Plaintiff has not made sufficient allegations to state a claim for deliberate
25 indifference to a serious medical need. Plaintiff states that Defendant Enenmoh blocked
26 his hip replacement surgery; Defendant Paat blocked his access to doctors; and Defendant
27 Peters blocked his access to pain management medication. These statements, without
28 more, do not demonstrate that Defendants were aware of Plaintiff's need for surgery or that

1 they were then deliberately indifferent to that need. In his amended complaint, Plaintiff
2 must describe how each Defendant blocked his access to the medical care that he needed.
3 He also needs to demonstrate that each Defendant had knowledge of his injury and need
4 for surgery. Plaintiff should also describe what, if anything, the delay in treatment caused.

5 As currently pleaded, Plaintiff's Eighth Amendment claim fails. Plaintiff will be given
6 one additional opportunity to amend this claim.

7 **B. Personal Participation and Supervisory Liability**

8 Plaintiff appears to be arguing that several of the named Defendants are liable for
9 the conduct of their subordinates as they were not present and did not participate in the
10 complained of conduct as currently described by Plaintiff.

11 Under Section 1983, Plaintiff must demonstrate that each named Defendant
12 personally participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930,
13 934 (9th Cir. 2002). The Supreme Court has emphasized that the term "supervisory
14 liability," loosely and commonly used by both courts and litigants alike, is a misnomer.
15 Iqbal, 129 S.Ct. at 1949. "Government officials may not be held liable for the
16 unconstitutional conduct of their subordinates under a theory of respondeat superior." Id.
17 at 1948. Rather, each government official, regardless of his or her title, is only liable for
18 his or her own misconduct, and therefore, Plaintiff must demonstrate that each defendant,
19 through his or her own individual actions, violated Plaintiff's constitutional rights. Id. at
20 1948-49.

21 When examining the issue of supervisor liability, it is clear that the supervisors are
22 not subject to vicarious liability, but are liable only for their own conduct. Jeffers v. Gomez,
23 267 F.3d 895, 915 (9th Cir. 2001); Wesley v. Davis, 333 F.Supp.2d 888, 892 (C.D.Cal.
24 2004). In order to establish liability against a supervisor, a plaintiff must allege facts
25 demonstrating (1) personal involvement in the constitutional deprivation, or (2) a sufficient
26 causal connection between the supervisor's wrongful conduct and the constitutional
27 violation. Jeffers, 267 F.3d at 915; Wesley, 333 F.Supp.2d at 892. The sufficient causal
28 connection may be shown by evidence that the supervisor implemented a policy so

1 deficient that the policy itself is a repudiation of constitutional rights. Wesley, 333
2 F.Supp.2d at 892 (internal quotations omitted). However, an individual’s general
3 responsibility for supervising the operations of a prison is insufficient to establish personal
4 involvement. Id. (internal quotations omitted).

5 Supervisor liability under Section 1983 is a form of direct liability. Munoz v.
6 Kolender, 208 F.Supp.2d 1125, 1149 (S.D.Cal. 2002). Under direct liability, Plaintiff must
7 show that Defendant breached a duty to him which was the proximate cause of his injury.
8 Id. “The requisite causal connection can be established . . . by setting in motion a series
9 of acts by others which the actor knows or reasonably should know would cause others to
10 inflict the constitutional injury.” Id. (quoting Johnson v. Duffy, 588 F.2d 740, 743-744 (9th
11 Cir. 1978)). However “where the applicable constitutional standard is deliberate
12 indifference, a plaintiff may state a claim for supervisory liability based upon the
13 supervisor’s knowledge of and acquiescence in unconstitutional conduct by others.” Star
14 v. Baca, 633 F.3d 1191, 1196 (9th Cir. 2011).

15 In this action, Plaintiff has not alleged facts demonstrating that many of the named
16 Defendants personally acted to violate his rights. Plaintiff must specifically link each
17 Defendant to a violation of his rights. Plaintiff shall be given the opportunity to file an
18 amended complaint curing the deficiencies described by the Court in this order.

19 **V. CONCLUSION AND ORDER**

20 The Court finds that Plaintiff’s Complaint fails to state any Section 1983 claims upon
21 which relief may be granted. The Court will provide Plaintiff time to file an amended
22 complaint to address the potentially correctable deficiencies noted above. See Noll v.
23 Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). In his Amended Complaint, Plaintiff must
24 demonstrate that the alleged incident or incidents resulted in a deprivation of his
25 constitutional rights. Iqbal, 129 S.Ct. at 1948-49. Plaintiff must set forth “sufficient factual
26 matter . . . to ‘state a claim that is plausible on its face.’” Iqbal, 129 S.Ct. at 1949 (quoting
27 Twombly, 550 U.S. at 555). Plaintiff must also demonstrate that each defendant personally
28 participated in the deprivation of his rights. Jones, 297 F.3d at 934.

1 Plaintiff should note that although he has been given the opportunity to amend, it
2 is not for the purposes of adding new defendants or claims. Plaintiff should focus the
3 amended complaint on claims and defendants discussed herein.

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

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

- 13 1. Plaintiff's Complaint is dismissed for failure to state a claim, with leave to file
14 an amended complaint within thirty (30) days from the date of service of this
15 order;
- 16 2. Plaintiff shall caption the amended complaint "First Amended Complaint" and
17 refer to the case number 1:10-cv-1239-OWW-GBC (PC); and
- 18 3. If Plaintiff fails to comply with this order, this action will be dismissed for
19 failure to state a claim upon which relief may be granted.

20
21 IT IS SO ORDERED.

22 Dated: June 10, 2011


UNITED STATES MAGISTRATE JUDGE