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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FLORENCE WALKER,

CASE NO. 1:11-cv-00419-AWI-BAM PC

Plaintiff,

ORDER DISMISSING COMPLAINT, WITH
LEAVE TO AMEND, FOR FAILURE TO
STATE A CLAIM

v.

JAVIER CAVAZOS, et al.,

(ECF No. 1)

Defendants.

THIRTY-DAY DEADLINE

I. Screening Requirement

Plaintiff Florence Walker is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Currently before the Court is the complaint, filed March 11, 2011. (ECF No. 1.)

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 “fails to state a claim on which relief may be granted,” or that “seeks monetary relief against a defendant who is immune from such relief.” [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#).

In determining whether a complaint states a claim, the Court looks to the pleading standard under Federal Rule of Civil Procedure 8(a). Under Rule 8(a), a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” [Fed. R. Civ. P. 8\(a\)\(2\)](#). “[T]he pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” [Ashcroft v.](#)

1 [Iqbal](#), 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009) (citing [Bell Atlantic Corp. v. Twombly](#), 550 U.S.
2 544, 555, 127 S. Ct. 1955 (2007)).

3 **II. Discussion**

4 In her complaint, Plaintiff names as Defendants Warden Javier Cavazos; Jacqueline Tinetti,
5 Program Manager of the Government Claims Board, Victim Compensation Board; and Dr. Walker,
6 Chief Officer of Prison Healthcare Services. Plaintiff alleges that she has been diagnosed with
7 eczema and is being denied lotions and Dove soap which are necessary to avoid a severe outbreak
8 of her skin condition. Plaintiff's complaint does not state any claims upon which relief may be
9 granted under section 1983. Plaintiff is required to show that (1) each defendant acted under color
10 of state law and (2) each defendant deprived her of rights secured by the Constitution or federal law.
11 [Long v. County of Los Angeles](#), 442 F.3d 1178, 1185 (9th Cir. 2006). Plaintiff must demonstrate
12 that each defendant personally participated in the deprivation of her rights. [Jones v. Williams](#), 297
13 F.3d 930, 934 (9th Cir. 2002). Additionally, there is no respondeat superior liability under section
14 1983, and each defendant is only liable for his or her own misconduct. [Iqbal](#) at 1948-49. Plaintiff
15 failed to set forth adequate facts demonstrating any violations of her constitutional rights, and
16 Plaintiff failed to link any of the named defendants to any acts or omissions at issue in the complaint.

17 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate
18 must show “deliberate indifference to serious medical needs.” [Jett v. Penner](#), 439 F.3d 1091, 1096
19 (9th Cir. 2006) (quoting [Estelle v. Gamble](#), 429 U.S. 97, 104, 97 S. Ct. 285, 291 (1976)). The two
20 part test for deliberate indifference requires the plaintiff to show (1) “a ‘serious medical need’ by
21 demonstrating that failure to treat a prisoner’s condition could result in further significant injury or
22 the ‘unnecessary and wanton infliction of pain,’” and (2) “the defendant’s response to the need was
23 deliberately indifferent.” [Jett](#), 439 F.3d at 1096.

24 Deliberate indifference is shown where the official is aware of a serious medical need and
25 fails to adequately respond. [Simmons v. Navajo County, Arizona](#), 609 F.3d 1011, 1018 (9th Cir.
26 2010). “Deliberate indifference is a high legal standard.” [Simmons](#), 609 F.3d at 1019; [Toguchi v.](#)
27 [Chung](#), 391 F.3d 1051, 1060 (9th Cir. 2004). The prison official must be aware of facts from which
28 he could make an inference that “a substantial risk of serious harm exists” and he must make the

1 inference. [Farmer v. Brennan](#), 511 U.S. 825, 837, 114 S. Ct. 1970, 1979 (1994).

2 Additionally, the Prison Litigation Reform Act places limitations on injunctive relief.
3 Section 3626(a)(1)(A) provides in relevant part, “[p]rospective relief in any civil action with respect
4 to prison conditions shall extend no further than necessary to correct the violation of the Federal right
5 of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief
6 unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct
7 the violation of the Federal right, and is the least intrusive means necessary to correct the violation
8 of the Federal right.” 18 U.S.C. § 3626(a)(1)(A).

9 Plaintiff shall be granted an opportunity to file an amended complaint to correct the
10 deficiencies identified in this order. In her amended complaint, Plaintiff shall state as briefly as
11 possible the facts of her case, describing how each defendant is involved, and Plaintiff shall not give
12 any legal arguments or cite to any cases or statutes. (See Form Complaint, § IV, enclosed with this
13 order.) Plaintiff shall separate her claims, so that it is clear what her claims are and who the
14 defendants involved are. Further, for each claim, Plaintiff shall clearly and succinctly set forth the
15 facts to state the acts or failure to act by each Defendant that led to a knowing violation of Plaintiff’s
16 federal rights.

17 **III. Conclusion and Order**

18 For the reasons stated, Plaintiff’s complaint does not state a cognizable claim for relief for
19 a violation of her constitutional rights. Plaintiff is granted leave to file an amended complaint within
20 thirty days. [Noll v. Carlson](#), 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the
21 nature of this suit by adding new, unrelated claims in his amended complaint. [George v. Smith](#), 507
22 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

23 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each
24 named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal rights,
25 [Iqbal](#), 129 S. Ct. at 1948-49. “The inquiry into causation must be individualized and focus on the
26 duties and responsibilities of each individual defendant whose acts or omissions are alleged to have
27 caused a constitutional deprivation.” [Leer v. Murphy](#), 844 F.2d 628, 633 (9th Cir. 1988). Although
28 accepted as true, the “[f]actual allegations must be [sufficient] to raise a right to relief above the

1 speculative level” Twombly, 550 U.S. at 555 (citations omitted).

2 Finally, an amended complaint supercedes the original complaint, Forsyth v. Humana, Inc.,
3 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and must
4 be “complete in itself without reference to the prior or superceded pleading,” Local Rule 220. “All
5 causes of action alleged in an original complaint which are not alleged in an amended complaint are
6 waived.” King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th
7 Cir. 1981)); accord Forsyth, 114 F.3d at 1474.

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

- 9 1. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 10 2. Plaintiff’s complaint, filed March 11, 2011, is dismissed for failure to state a claim
11 upon which relief may be granted under section 1983;
- 12 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
13 amended complaint; and
- 14 4. If Plaintiff fails to file an amended complaint in compliance with this order, this
15 action will be dismissed, with prejudice, for failure to state a claim.

16 IT IS SO ORDERED.

17 **Dated: March 12, 2012**

17 /s/ **Barbara A. McAuliffe**
18 UNITED STATES MAGISTRATE JUDGE