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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CARLOS ANGEL,

Plaintiff,

v.

P. BRAZELTON, et al.,

Defendants.

CASE NO. 1:12-cv-00272-AWI-GBC (PC)

ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND

(Doc. 1)

AMENDED COMPLAINT DUE WITHIN
THIRTY DAYS

I. Procedural History

Carlos Angel (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis, in this civil rights action pursuant to 42 U.S.C. § 1983. On February 24, 2012, Plaintiff filed his original complaint which is currently before the Court. Doc. 1.

II. 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 “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 such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall

1 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a
2 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

3 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon
4 which relief may be granted if it appears beyond doubt that Plaintiff can prove no set of facts in
5 support of the claim or claims that would entitle him to relief. *See Hishon v. King & Spalding*, 467
6 U.S. 69, 73 (1984) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)); *see also Synagogue v.*
7 *United States*, 482 F.3d 1058, 1060 (9th Cir. 2007); *NL Industries, Inc. v. Kaplan*, 792 F.2d 896, 898
8 (9th Cir. 1986). In determining whether to dismiss an action, the Court must accept as true the
9 allegations of the complaint in question, and construe the pleading in the light most favorable to the
10 plaintiff, and resolve all doubts in the plaintiff's favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421-22
11 (1969); *Daniels-Hall v. National Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010).

13 **III. Plaintiff's Complaint**

14 Plaintiff is currently a state prisoner at the R. J. Donovan Correctional Facility in San Diego,
15 California. The events central to Plaintiff's complaint occurred while he was incarcerated at Pleasant
16 Valley State Prison (PVSP) in Coalinga, California. Doc. 1. In the complaint, Plaintiff names P.
17 Brazelton (Warden/Acting Warden at PVSP) as a defendant in this action. Doc. 1 at 2. Plaintiff
18 seeks monetary damages and injunctive relief. Doc. 1 at 6.

19 Plaintiff alleges that for over a year he submitted to examination by PVSP health care
20 services for an eye treatment known as Pterygium removal. Doc. 1 at 3. Plaintiff's eye condition
21 causes pain that effects all aspects of Plaintiff's life. Doc. 1 at 3. Plaintiff was sent to an outside
22 medical specialist, who after a thorough and exhaustive examination concluded that Pterygium
23 removal was needed. Doc. 1 at 3. Plaintiff's request for surgery was denied by Utilization
24 Management (UM) and deemed "not medically necessary at this time." Plaintiff proceeded with the
25 administrative grievance process to no avail. Doc. 1 at 3. A year has past and his condition has
26 worsened. Plaintiff asserts that Defendants have been deliberately indifferent by ignoring Plaintiff's
27 request for eye surgery. Doc. 1 at 3.

1 **IV. Analysis**

2 **A. Eighth Amendment Deliberate Indifference**

3 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate
4 must show ‘deliberate indifference to serious medical needs.’” *Jett v. Penner*, 439 F.3d 1091, 1096
5 (9th Cir. 2006) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 295 (1976)). The two part
6 test for deliberate indifference requires the plaintiff to show (1) “‘a serious medical need’ by
7 demonstrating that ‘failure to treat a prisoner’s condition could result in further significant injury or
8 the unnecessary and wanton infliction of pain,’” and (2) “‘the defendant’s response to the need was
9 deliberately indifferent.” *Jett*, 439 F.3d at 1096 (quoting *McGuckin v. Smith*, 974 F.2d 1050, 1059
10 (9th Cir. 1992), overruled on other grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th
11 Cir. 1997) (en banc) (internal quotations omitted)). Deliberate indifference is shown by “a
12 purposeful act or failure to respond to a prisoner’s pain or possible medical need, and harm caused
13 by the indifference.” *Id.* (citing *McGuckin*, 974 F.2d at 1060).

14 “Mere negligence in diagnosing or treating a medical condition, without more, does not
15 violate a prisoner's Eighth Amendment rights.” *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000)
16 (quoting *Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988) (internal quotation marks
17 omitted). Additionally, to state a viable claim, Plaintiff must demonstrate that each named defendant
18 personally participated in the deprivation of his rights. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1948-49
19 (2009); *Simmons v. Navajo County, Ariz.*, 609 F.3d 1011, 1020-21 (9th Cir. 2010); *Ewing v. City of*
20 *Stockton*, 588 F.3d 1218, 1235 (9th Cir. 2009); *Jones v. Williams*, 297 F.3d 930, 934. Liability may
21 not be imposed on supervisory personnel under the theory of *respondeat superior*, *Iqbal*, 129 S.Ct.
22 at 1948-49; *Ewing*, 588 F.3d at 1235, and supervisors may only be held liable if they “participated
23 in or directed the violations, or knew of the violations and failed to act to prevent them,” *Taylor v.*
24 *List*, 880 F.2d 1040, 1045 (9th Cir. 1989); accord *Starr v. Baca*, 652 F.3d 1202, 1205-08 (9th Cir.
25 2011); *Corales v. Bennett*, 567 F.3d 554, 570 (9th Cir. 2009); *Preschooler II v. Clark County School*
26 *Board of Trustees*, 479 F.3d 1175, 1182 (9th Cir. 2007); *Harris v. Roderick*, 126 F.3d 1189, 1204
27 (9th Cir. 1997).

28 “Deliberate indifference is a high legal standard.” *Toguchi v. Chung*, 391 F.3d 1051, 1060

1 (9th Cir. 2004). “A difference of opinion between a prisoner-patient and prison medical authorities
2 regarding treatment does not give rise to a § 1983 claim,” *Franklin v. Oregon*, 662 F.2d 1337, 1344
3 (9th Cir. 1981) (internal citation omitted), and a difference of opinion between medical personnel
4 regarding treatment does not amount to deliberate indifference, *Sanchez v. Vild*, 891 F.2d 240, 242
5 (9th Cir. 1989). To prevail, Plaintiff “must show that the course of treatment the doctors chose was
6 medically unacceptable under the circumstances . . . and . . . that they chose this course in conscious
7 disregard of an excessive risk to plaintiff’s health.” *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir.
8 1986) (internal citations omitted).

9 **1. Analysis**

10 Plaintiff’s allegations that a medical opinion from an outside specialist he saw before
11 incarceration and an opinion from prison physician differ is insufficient to state a claim. *See Toguchi*
12 *v. Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004); *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir.
13 1981) (internal citation omitted); *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). The Court may
14 consider exhibits attached to the complaint that contradict a plaintiff’s allegations. *See Tyler v.*
15 *Cuomo*, 236 F.3d 1124, 1131 (9th Cir. 2000); *Durning v. First Boston Corp.*, 815 F.2d 1265, 1267
16 (9th Cir. 1987). Although Plaintiff asserts that Defendants were deliberately indifferent, Plaintiff’s
17 attachments demonstrate that he was receiving treatment in the form of Ketorolac Thomethamine
18 drops. Doc. 1 at 8. To the extent that Plaintiff’s condition has worsened and Defendants have failed
19 to identify the correct medical condition or appropriate medical treatment, such action, at most would
20 amount to negligence, and negligence fails to state a deliberate indifference claim.” *Lopez v. Smith*,
21 203 F.3d 1122, 1131 (9th Cir. 2000).

22 **B. Linkage Requirement**

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

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

28 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between the

1 actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. *See Monell*
2 *v. Department of Social Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 (1976). The
3 Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a constitutional right,
4 within the meaning of section 1983, if he does an affirmative act, participates in another’s
5 affirmative acts or omits to perform an act which he is legally required to do that causes the
6 deprivation of which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). In
7 order to state a claim for relief under section 1983, Plaintiff must link each named defendant with
8 some affirmative act or omission that demonstrates a violation of Plaintiff’s federal rights.

9 **1. Analysis**

10 Although Plaintiff lists Brazelton (Warden/Acting Warden at PVSP) as a defendant in this
11 action, Plaintiff fails to explain what specific act or omission Defendant Brazelton did to cause the
12 constitutional deprivation. Plaintiff alleges that he repeatedly complained of his medical condition
13 and his needs were ignored, however, Plaintiff needs to specify: 1) who were the individuals; 2)
14 when and how each individual was aware of Plaintiff’s serious medical need; and 3) what specific
15 act or omission each individual did or failed to do.

16 **V. Conclusions and Order**

17 Plaintiff’s complaint fails to state a claim upon which relief may be granted under section
18 1983. The Court will grant Plaintiff an opportunity to file an amended complaint. *Noll v. Carlson*,
19 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this suit by adding
20 new, unrelated claims in his amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir.
21 2007).

22 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each
23 named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal rights.
24 *Ashcroft v. Iqbal*, 556 U.S. 662, 675-76 (2009). Although accepted as true, the “[f]actual allegations
25 must be [sufficient] to raise a right to relief above the speculative level” *Bell Atlantic Corp.*
26 *v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted).

27 Finally, Plaintiff is advised that Local Rule 220 requires that an amended complaint be
28 complete in itself without reference to any prior pleading. An amended complaint supercedes the

1 original complaint, *Lacey v. Maricopa County*, Nos. 09-15806, 09-15703, 2012 WL 3711591, at *1
2 n.1 (9th Cir. Aug. 29, 2012) (en banc), and it must be “complete in itself without reference to the
3 prior or superceded pleading,” Local Rule 220. Therefore, in an amended complaint, as in an
4 original complaint, each claim and the involvement of each defendant must be sufficiently alleged.
5 The amended complaint should be clearly and boldly titled "Amended Complaint," refer to the
6 appropriate case number, and be an original signed under penalty of perjury.

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

- 8 1. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 9 2. Plaintiff’s complaint, filed February 24, 2012, is dismissed for failure to state a claim
10 upon which relief may be granted;
- 11 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
12 amended complaint; and
- 13 4. If Plaintiff fails to file an amended complaint in compliance with this order, this
14 action will be dismissed, with prejudice, for failure to state a claim.

15
16 IT IS SO ORDERED.

17 Dated: October 31, 2012


18 UNITED STATES MAGISTRATE JUDGE