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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VERNON JONES,
Plaintiff,
vs.
M. BOPARI, M.D., et al.,
Defendants.

1:13-cv-00881-AWI-GSA-PC
FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE BE
DISMISSED, WITH PREJUDICE, FOR
FAILURE TO STATE A CLAIM
(Doc. 9.)
OBJECTIONS, IF ANY, DUE WITHIN
THIRTY DAYS

I. BACKGROUND

Vernon Jones ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on January 12, 2013. (Doc. 1.) The Court screened the Complaint pursuant to 28 U.S.C. § 1915A and issued an order on October 21, 2013, dismissing the Complaint for failure to state a claim, with leave to amend. (Doc. 8.) On November 15, 2013, Plaintiff filed the First Amended Complaint, which is now before the court for screening. (Doc. 9.)

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).

1 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
2 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
3 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
4 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
5 paid, the court shall dismiss the case at any time if the court determines that the action or
6 appeal fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

7 A complaint is required to contain “a short and plain statement of the claim showing
8 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
9 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
10 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937,
11 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955
12 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
13 unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
14 (internal quotation marks and citation omitted). Plaintiff must set forth “sufficient factual
15 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Iqbal 556 U.S.
16 at 678. While factual allegations are accepted as true, legal conclusions are not. Id.

17 To state a viable claim for relief, Plaintiff must set forth sufficient factual allegations to
18 state a plausible claim for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572
19 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls short of meeting this
20 plausibility standard. Id.

21 **III. SUMMARY OF FIRST AMENDED COMPLAINT**

22 Plaintiff is presently incarcerated at the California Rehabilitation Center in Norco,
23 California, in the custody of the California Department of Corrections and Rehabilitation
24 (CDCR). The events at issue in the First Amended Complaint allegedly occurred at Avenal
25 State Prison in Avenal, California, when Plaintiff was incarcerated at there. Plaintiff names as
26 sole defendant Dr. M. Bopari (“Defendant”). Defendant was employed by the CDCR at the
27 time of the events at issue. Plaintiff’s factual allegations follow.

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1 Plaintiff alleges that he has been denied a much-needed surgery to remove cataracts.
2 Surgery was recommended to Plaintiff by Folsom State Prison. However, Dr. M. Bopari,
3 physician at ASP, substituted the surgery with a less effective course of treatment, prescription
4 eyeglasses. Plaintiff alleges that when he walks during the day, he experiences a blind spot to
5 his left. At night, he experiences a “scintillation spot” that impairs his vision. (Amended
6 Compl. at 3 ¶IV.) Plaintiff claims that his impaired vision jeopardizes his safety and poses a
7 hazard to the security of the institution.

8 Dr. Bopari is familiar with Plaintiff’s need for cataract surgery based on the
9 documented medical history and the recommendation by Folsom State Prison. Instead, Dr.
10 Bopari prescribed glasses, which actually exacerbated the situation, causing Plaintiff to suffer
11 headaches from the glasses because of the prescription. Plaintiff ultimately returned the
12 glasses.

13 Plaintiff alleges that Dr. Bopari knew that Plaintiff’s situation can only be corrected
14 through surgery. However, for budgetary or other reasons, Plaintiff is being denied the surgery.
15 Plaintiff alleges that Dr. Bopari and other medical personnel acted with deliberate indifference.

16 Plaintiff requests monetary damages and injunctive relief.

17 **IV. PLAINTIFF’S EIGHTH AMENDMENT MEDICAL CLAIM**

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

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

23 42 U.S.C. § 1983. “Section 1983 . . . creates a cause of action for violations of the federal
24 Constitution and laws.” Sweaney v. Ada County, Idaho, 119 F.3d 1385, 1391 (9th Cir. 1997)
25 (internal quotations omitted). “To the extent that the violation of a state law amounts to the
26 deprivation of a state-created interest that reaches beyond that guaranteed by the federal
27 Constitution, Section 1983 offers no redress.” Id.

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1 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an
2 inmate must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d
3 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285 (1976)).
4 The two-part test for deliberate indifference requires the plaintiff to show (1) “‘a serious
5 medical need’ by demonstrating that ‘failure to treat a prisoner’s condition could result in
6 further significant injury or the unnecessary and wanton infliction of pain,’” and (2) “the
7 defendant’s response to the need was deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting
8 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds by WMX
9 Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (internal quotations
10 omitted)). Deliberate indifference is shown by “a purposeful act or failure to respond to a
11 prisoner’s pain or possible medical need, and harm caused by the indifference.” Id. (citing
12 McGuckin, 974 F.2d at 1060). Deliberate indifference may be manifested “when prison
13 officials deny, delay or intentionally interfere with medical treatment, or it may be shown by
14 the way in which prison physicians provide medical care.” Id. Where a prisoner is alleging a
15 delay in receiving medical treatment, the delay must have led to further harm in order for the
16 prisoner to make a claim of deliberate indifference to serious medical needs. McGuckin at
17 1060 (citing Shapely v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir.
18 1985)).

19 “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051,
20 1060 (9th Cir. 2004). “Under this standard, the prison official must not only ‘be aware of the
21 facts from which the inference could be drawn that a substantial risk of serious harm exists,’ but
22 that person ‘must also draw the inference.’” Id. at 1057 (quoting Farmer v. Brennan, 511 U.S.
23 825, 837, 114 S.Ct. 1970 (1994)). “If a prison official should have been aware of the risk, but
24 was not, then the official has not violated the Eighth Amendment, no matter how severe the
25 risk.” Id. (quoting Gibson v. County of Washoe, Nevada, 290 F.3d 1175, 1188 (9th Cir.
26 2002)). “A showing of medical malpractice or negligence is insufficient to establish a
27 constitutional deprivation under the Eighth Amendment. Id. at 1060. “[E]ven gross negligence

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1 is insufficient to establish a constitutional violation.” Id. (citing Wood v. Housewright, 900
2 F.2d 1332, 1334 (9th Cir. 1990)).

3 “A difference of opinion between a prisoner-patient and prison medical authorities
4 regarding treatment does not give rise to a § 1983 claim.” Franklin v. Oregon, 662 F.2d 1337,
5 1344 (9th Cir. 1981) (internal citation omitted). To prevail, plaintiff “must show that the course
6 of treatment the doctors chose was medically unacceptable under the circumstances . . . and . . .
7 that they chose this course in conscious disregard of an excessive risk to plaintiff’s health.”
8 Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996) (internal citations omitted).

9 Discussion

10 Plaintiff has demonstrated that he has a serious medical need because he has cataracts.
11 However, Plaintiff fails to show that defendant Dr. M. Bopari acted against him with deliberate
12 indifference to a substantial risk of serious harm. Plaintiff fails to allege facts showing that Dr.
13 Bopari acted against him, or failed to act, while knowing of, and deliberately disregarding, a
14 substantial risk of serious harm to Plaintiff. Plaintiff alleges, at most, a difference of opinion
15 between the doctors and himself about his medical treatment, which does not give rise to a §
16 1983 claim. Therefore, Plaintiff fails to state an Eighth Amendment medical claim.

17 **V. CONCLUSION AND RECOMMENDATIONS**

18 The Court finds that Plaintiff’s First Amended Complaint fails to state any cognizable
19 claims upon which relief may be granted under § 1983. The Court previously granted Plaintiff
20 leave to amend the complaint, with ample guidance by the Court. Plaintiff has now filed two
21 complaints without stating any claims upon which relief may be granted under § 1983. The
22 Court finds that the deficiencies outlined above are not capable of being cured by amendment,
23 and therefore further leave to amend should not be granted. 28 U.S.C. § 1915(e)(2)(B)(ii);
24 Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000).

25 Therefore, **IT IS HEREBY RECOMMENDED** that pursuant to 28 U.S.C. § 1915A
26 and 28 U.S.C. § 1915(e), this action be dismissed with prejudice for failure to state a claim
27 upon which relief may be granted under § 1983, and that this dismissal be subject to the “three-

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