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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KARENKA BROWN,
Plaintiff,

vs.

M. D. BITER, et al.,
Defendants

Case No. 1:13 cv 01106 AWI GSA PC

ORDER DISMISSING FIRST AMENDED
COMPLAINT AND GRANTING PLAINTIFF
LEAVE TO FILE A SECOND AMENDED
COMPLAINT

AMENDED COMPLAINT DUE
IN THIRTY DAYS

I. Screening Requirement

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(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 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 dismiss the case at any time if the court determines that . . . the action or

1 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. §
2 1915(e)(2)(B)(ii).

3 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
4 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534
5 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a
6 short and plain statement of the claim showing that the pleader is entitled to relief” Fed. R.
7 Civ. P. 8(a). “Such a statement must simply give the defendant fair notice of what the plaintiff’s
8 claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the
9 liberal pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams,
10 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not
11 supply essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union
12 Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268
13 (9th Cir. 1982)).

14 **II. Plaintiff’s Claims**

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17 This action proceeds on the August 8, 2013, first amended complaint. Plaintiff, an
18 inmate in the custody of the California Department of Corrections and Rehabilitation at Kern
19 Valley State Prison, brings this action against correctional officials employed by the CDCR at
20 Kern Valley. Plaintiff claims that he is being denied adequate medical care in violation of the
21 Eighth Amendment. Plaintiff names the following individual defendants: Warden M.D. Biter;
22 Chief Medical Officer S. Lopez; Dr. Jonathan Akanno; Dr. U. Varanasi; Dr. Umloa; Dietitians L.
23 Johnson and R. Yager.
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26 Plaintiff alleges that defendants in general are deliberately indifferent to his serious
27 medical needs. Plaintiff’s alleges that defendants “in this complaint when due to the wanton,
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1 reckless, malicious or oppressive and unwanted stress, medical anguish and exemplary damages
2 which is due to the oppressive character of the acts complained of in this civil claim.” (Am.
3 Compl. ¶ IV.) Plaintiff complains generally about “the failed healthcare of an through the
4 CDCR and Warden M.D. Biter’s knowledge of my high risk medical needs for end stage renal
5 disease and dialysis treatment.” (Id.)

7 **A. Medical Care**

8 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an
9 inmate must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d
10 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 295 (1976)).
11 The two part test for deliberate indifference requires the plaintiff to show (1) “‘a serious medical
12 need’ by demonstrating that ‘failure to treat a prisoner’s condition could result in further
13 significant injury or the unnecessary and wanton infliction of pain,’” and (2) “‘the defendant’s
14 response to the need was deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v.
15 Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v.
16 Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (internal quotations omitted)). Deliberate
17 indifference is shown by “a purposeful act or failure to respond to a prisoner’s pain or possible
18 medical need, and harm caused by the indifference.” Id. (citing McGuckin, 974 F.2d at 1060).
19 Where a prisoner is alleging a delay in receiving medical treatment, the delay must have led to
20 further harm in order for the prisoner to make a claim of deliberate indifference to serious
21 medical needs. McGuckin at 1060 (citing Shapely v. Nevada Bd. of State Prison Comm’rs, 766
22 F.2d 404, 407 (9th Cir. 1985)).

26 Here, the Court finds Plaintiff’s allegations to be vague. Plaintiff sets forth generalized
27 allegations regarding his health care, and names individual defendants. To state a claim under
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1 section 1983, a plaintiff must allege that (1) the defendant acted under color of state law and (2)
2 the defendant deprived him of rights secured by the Constitution or federal law. Long v. County
3 of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006). “A person deprives another of a
4 constitutional right, where that person ‘does an affirmative act, participates in another’s
5 affirmative acts, or omits to perform an act which [that person] is legally required to do that
6 causes the deprivation of which complaint is made.’” Hydrick v. Hunter, 500 F.3d 978, 988 (9th
7 Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “[T]he ‘requisite
8 causal connection can be established not only by some kind of direct, personal participation in
9 the deprivation, but also by setting in motion a series of acts by others which the actor knows or
10 reasonably should know would cause others to inflict the constitutional injury.’” Id. (quoting
11 Johnson at 743-44).

14 Plaintiff need not, however, set forth legal arguments in support of his claims. In order to
15 hold an individual defendant liable, Plaintiff must name the individual defendant, describe where
16 that defendant is employed and in what capacity, and explain how that defendant acted under
17 color of state law. Plaintiff should state clearly, in his or her own words, what happened.
18 Plaintiff must describe what each defendant, *by name*, did to violate the particular right described
19 by Plaintiff. Plaintiff has failed to do so here.

21 **III. Conclusion and Order**

22 The Court has screened Plaintiff’s first amended complaint and finds that it does not state
23 any claims upon which relief may be granted under section 1983. The Court will provide
24 Plaintiff with the opportunity to file an amended complaint curing the deficiencies identified by
25 the Court in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is
26 cautioned that he may not change the nature of this suit by adding new, unrelated claims in his
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1 amended complaint. George, 507 F.3d at 607 (no “buckshot” complaints).

2 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what
3 each named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal
4 rights, Hydrick, 500 F.3d at 987-88. Although accepted as true, the “[f]actual allegations must
5 be [sufficient] to raise a right to relief above the speculative level” Bell Atlantic Corp. v.
6 Twombly, 550 U.S. 544, 554 (2007) (citations omitted).

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8 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
9 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565,
10 567 (9th Cir. 1987), and must be “complete in itself without reference to the prior or superceded
11 pleading,” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of action alleged in an
12 original complaint which are not alleged in an amended complaint are waived.” King, 814 F.2d
13 at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord
14 Forsyth, 114 F.3d at 1474.
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16 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 17 1. Plaintiff’s first amended complaint is dismissed, with leave to amend, for failure
18 to state a claim;
- 19 2. The Clerk’s Office shall send to Plaintiff a complaint form;
- 20 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a
21 second amended complaint;
- 22 4. Plaintiff may not add any new, unrelated claims to this action via his amended
23 complaint and any attempt to do so will result in an order striking the amended
24 complaint; and
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5. If Plaintiff fails to file an amended complaint, the Court will recommend that this action be dismissed, with prejudice, for failure to state a claim.

IT IS SO ORDERED.

Gary S. Austin

Dated: October 9, 2013 _____/s/

UNITED STATES MAGISTRATE JUDGE