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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAMOR HILL,

Case No. 1:13-cv-01618-AWI-SKO (PC)

Plaintiff,

ORDER DISMISSING COMPLAINT, WITH
LEAVE TO AMEND, FOR FAILURE TO
STATE A CLAIM UNDER SECTION 1983

v.

JAMES A. YATES, et al.,

(Doc. 1)

Defendants.

THIRTY-DAY DEADLINE

First Screening Order

I. Screening Requirement and Standard

Plaintiff Damor Hill, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on August 13, 2013. Plaintiff’s claims arise from events which occurred at Pleasant Valley State Prison (“PVSP”) in Coalinga, California.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an 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 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

1 A complaint must contain “a short and plain statement of the claim showing that the
2 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
3 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
4 conclusory statements, do not suffice,” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937
5 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007)), and
6 courts “are not required to indulge unwarranted inferences,” *Doe I v. Wal-Mart Stores, Inc.*, 572
7 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). While factual
8 allegations are accepted as true, legal conclusions are not. *Iqbal*, 556 U.S. at 678.

9 Under section 1983, Plaintiff must demonstrate that each defendant personally participated
10 in the deprivation of his rights. *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). This
11 requires the presentation of factual allegations sufficient to state a plausible claim for relief. *Iqbal*,
12 556 U.S. at 678-79; *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). Prisoners
13 proceeding pro se in civil rights actions are entitled to have their pleadings liberally construed and
14 to have any doubt resolved in their favor, *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)
15 (citations omitted), but nevertheless, the mere possibility of misconduct falls short of meeting the
16 plausibility standard, *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969.

17 **II. Discussion**

18 **A. Plaintiff’s Allegations**

19 Plaintiff, who is currently incarcerated at California State Prison-Solano in Vacaville,
20 brings this action against Warden James A. Yates, Dr. Fortune, and health care appeals
21 coordinators A. Nesbit and H. Martinez for violating his rights under the Eighth Amendment of
22 the United States Constitution while he was at PVSP in 2010.

23 Plaintiff alleges that in September 2010, he began to lose weight and have chest pain.
24 Defendant Fortune was unable to diagnose the problem and Plaintiff asked for lab work. Lab tests
25 were conducted but no one informed Plaintiff of the results.

26 In December 2010, Plaintiff was transferred to California Men’s Colony in San Luis
27 Obispo. Plaintiff alleges that he had the same debilitating symptoms, and he was finally
28 diagnosed with Valley Fever as a result of the lab tests ordered by Defendant Fortune in

1 September 2010. (Comp., p. 25-26.) Plaintiff alleges that his results were known in September
2 2010 but he received no treatment until he was transferred to a different prison. (*Id.*)

3 **B. Defendant Fortune**

4 While the Eighth Amendment of the United States Constitution entitles Plaintiff to medical
5 care, the Eighth Amendment is violated only when a prison official acts with deliberate
6 indifference to an inmate's serious medical needs. *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir.
7 2012)), *overruled in part on other grounds, Peralta v. Dillard*, 744 F.3d 1076, 1082-83 (9th Cir.
8 2014); *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012); *Jett v. Penner*, 439 F.3d 1091,
9 1096 (9th Cir. 2006). Plaintiff "must show (1) a serious medical need by demonstrating that
10 failure to treat [his] condition could result in further significant injury or the unnecessary and
11 wanton infliction of pain," and (2) that "the defendant's response to the need was deliberately
12 indifferent." *Wilhelm*, 680 F.3d at 1122 (citing *Jett*, 439 F.3d 1091, 1096 (9th Cir. 2006)).
13 Deliberate indifference is shown by "(a) a purposeful act or failure to respond to a prisoner's pain
14 or possible medical need, and (b) harm caused by the indifference." *Wilhelm*, 680 F.3d at 1122
15 (citing *Jett*, 439 F.3d at 1096). The requisite state of mind is one of subjective recklessness, which
16 entails more than ordinary lack of due care. *Snow*, 681 F.3d at 985 (citation and quotation marks
17 omitted); *Wilhelm*, 680 F.3d at 1122.

18 Plaintiff's complaint does not set forth any facts supporting a claim that Defendant Fortune
19 knowingly disregarded an excessive risk of harm to Plaintiff. The fact Plaintiff did not learn of his
20 lab results and begin treatment until December 2010 is, alone, insufficient to support a claim
21 against Defendant Fortune for violation of the Eighth Amendment.

22 **C. Defendants Nesbit and Martinez**

23 Based on Plaintiff's exhibits, Defendants Nesbit and Martinez are named as defendants
24 because they screened out Plaintiff's administrative appeal. (Comp., p. 14.) However, the appeals
25 process does not create any substantive rights and Plaintiff cannot pursue a claim against appeals
26 coordinators for screening out his appeal. *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003)
27 (citing *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988)).

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1 Plaintiff's complaint is devoid of any other facts which support a claim that Defendants
2 Nesbit and Martinez were involved in a violation of his federal rights, and he fails to state a claim
3 against them under section 1983.

4 **D. Defendant Yates**

5 Finally, supervisory personnel such as Defendant Yates may not be held liable under
6 section 1983 for the actions of subordinate employees based on *respondeat superior*, or vicarious
7 liability. *Crowley v. Bannister*, 734 F.3d 967, 977 (9th Cir. 2013); *accord Lemire v. California*
8 *Dep't of Corr. and Rehab.*, 726 F.3d 1062, 1074-75 (9th Cir. 2013); *Moss v. U.S. Secret Service*,
9 711 F.3d 941, 967-68 (9th Cir. 2013); *Lacey v. Maricopa County*, 693 F.3d 896, 915-16 (9th Cir.
10 2012) (en banc). "A supervisor may be liable only if (1) he or she is personally involved in the
11 constitutional deprivation, or (2) there is a sufficient causal connection between the supervisor's
12 wrongful conduct and the constitutional violation." *Crowley*, 734 F.3d at 977 (citing *Snow*, 681
13 F.3d at 989) (internal quotation marks omitted); *accord Lemire*, 726 F.3d at 1074-75; *Lacey*, 693
14 F.3d at 915-16. "Under the latter theory, supervisory liability exists even without overt personal
15 participation in the offensive act if supervisory officials implement a policy so deficient that the
16 policy itself is a repudiation of constitutional rights and is the moving force of a constitutional
17 violation." *Crowley*, 734 F.3d at 977 (citing *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989))
18 (internal quotation marks omitted).

19 Plaintiff's complaint contains no facts linking Defendant Yates to a violation of Plaintiff's
20 rights and it appears he is named as a defendant solely based on his position as warden. Liability
21 may not be imposed on Defendant Yates on that basis and Plaintiff fails to state a claim against
22 him.

23 **III. Conclusion and Order**

24 Plaintiff's complaint fails to state a claim upon which relief may be granted under section
25 1983. The Court will provide Plaintiff with an opportunity to file an amended complaint. *Akhtar*
26 *v. Mesa*, 698 F.3d 1202, 1212-13 (9th Cir. 2012); *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir.
27 2000).

1 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
2 each named defendant did that led to the deprivation of Plaintiff's federal rights, *Jones*, 297 F.3d
3 at 934. Plaintiff must demonstrate a causal connection between each defendant's conduct and the
4 violation of his rights; liability may not be imposed on supervisory personnel under the theory of
5 mere *respondeat superior*. *Iqbal*, 556 U.S. at 676-77; *Crowley*, 734 F.3d at 977; *Starr v. Baca*,
6 652 F.3d 1202, 1205-07 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2101 (2012). Further, although
7 accepted as true, the "[f]actual allegations must be [sufficient] to raise a right to relief above the
8 speculative level. . . ." *Twombly*, 550 U.S. at 555 (citations omitted).

9 Finally, an amended complaint supercedes the original complaint, *Lacey*, 693 F.3d at 907
10 n.1, and it must be "complete in itself without reference to the prior or superceded pleading,"
11 Local Rule 220.

12 Accordingly, it is HEREBY ORDERED that:

- 13 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a claim
14 under section 1983;
- 15 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 16 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
17 amended complaint; and
- 18 4. If Plaintiff fails to file an amended complaint in compliance with this order, this
19 action will be dismissed, with prejudice, for failure to state a claim.

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22 IT IS SO ORDERED.

23 Dated: May 8, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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