

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CARLOS SANCHEZ, JR.,

Plaintiff,

v.

L.V.N. UBA, et al.,

Defendants.

Case No. 1:13-cv-01982 DLB PC

ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND

THIRTY-DAY DEADLINE

Plaintiff Carlos Sanchez, Jr., (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on December 4, 2013.¹ He names L.V.N. Uba and R.N. Whitten as Defendants.

A. 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 On December 30, 2013, Plaintiff consented to the jurisdiction of the magistrate judge pursuant to 28 U.S.C. § 636(c).

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 must contain “a short and plain statement of the claim showing that the pleader
4 is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
5 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
6 do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Bell Atl. Corp. v. Twombly,
7 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual matter, accepted as true, to
8 ‘state a claim that is plausible on its face.’” Id. (quoting Twombly, 550 U.S. at 555). While factual
9 allegations are accepted as true, legal conclusions are not. Id.

10 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or other
11 federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d 1087, 1092
12 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); Jones v.
13 Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff’s allegations must link the actions or
14 omissions of each named defendant to a violation of his rights; there is no respondeat superior
15 liability under section 1983. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County, Ariz., 609 F.3d
16 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009);
17 Jones, 297 F.3d at 934. Plaintiff must present factual allegations sufficient to state a plausible claim
18 for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).
19 The mere possibility of misconduct falls short of meeting this plausibility standard. Iqbal, 556 U.S.
20 at 678; Moss, 572 F.3d at 969.

21 **B. SUMMARY OF PLAINTIFF’S ALLEGATIONS**

22 Plaintiff is currently housed at Valley State Prison in Chowchilla, California, where the
23 events giving rise to this action took place.

24 Plaintiff alleges the following. On September 22, 2013, Plaintiff injured his left hand and
25 wrist while participating in yard activities. Plaintiff was in excruciating pain and presented to the
26 medical clinic at Facility “D.” He informed Defendants L.V.N. Uba and R.N. Whitten that he was in
27 extreme pain and showed them his left hand and wrist which appeared swollen. Plaintiff requested
28 medical treatment and something to help relieve the pain. Defendants Uba and Whitten told Plaintiff

1 to return in the morning as there was nothing they could do for him right now. Plaintiff asked for
2 pain relief medication. In response, Defendants Whitten and Uba wrote Plaintiff a pass to see the
3 R.N. medical line the next morning. Defendants informed Plaintiff to just “report in the morning,
4 that’s when medication will be given to you if needed.”

5 Plaintiff alleges he suffered pain and humiliation as a result of Defendants’ failure to take
6 action to relieve the pain. Plaintiff seeks declaratory relief and compensatory damages.

7 **C. DISCUSSION**

8 1. Eighth Amendment – Deliberate Indifference to Medical Need

9 To maintain an Eighth Amendment claim based on medical care in prison, a plaintiff must
10 show deliberate indifference to his serious medical needs. Jett v. Penner, 439 F.3d 1091, 1096 (9th
11 Cir. 2006) (citing Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 295 (1976)) (quotation marks
12 omitted). The two-part test for deliberate indifference requires the plaintiff to show (1) a serious
13 medical need by demonstrating that failure to treat a prisoner’s condition could result in further
14 significant injury or the unnecessary and wanton infliction of pain, and (2) the defendant’s response
15 to the need was deliberately indifferent. Jett, 439 F.3d at 1096 (quotation marks and citation
16 omitted). Deliberate indifference is shown by a purposeful act or failure to respond to a prisoner’s
17 pain or possible medical need, and harm caused by the indifference. Id. (citation and quotation
18 marks omitted). Deliberate indifference may be manifested when prison officials deny, delay or
19 intentionally interfere with medical treatment, or it may be shown by the way in which prison
20 physicians provide medical care. Id. (citation and quotations omitted). Where a prisoner is alleging
21 a delay in receiving medical treatment, the delay must have led to further harm in order for the
22 prisoner to make a claim of deliberate indifference to serious medical needs. Berry v. Bunnell, 39
23 F.3d 1056, 1057 (9th Cir. 1994); McGuckin v. Smith, 974 F.2d 1050, 1060 (9th Cir. 1992),
24 overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en
25 banc).

26 Here, the Court does not find that Defendants’ actions rise to the level necessary to state a
27 constitutional violation. Plaintiff sustained an injury to his hand and wrist and the area became
28 swollen. He sought aid from the Defendants who advised him to return in the morning and report to

1 the medical clinic. Defendants provided him with a medical pass for the next morning. Isolated
2 occurrences of neglect do not rise to the level of an Eighth Amendment violation. O’Loughlin v.
3 Doe, 920 F.2d 614, 617 (9th Cir. 1990) (quotation marks omitted); Wood v. Housewright, 900 F.2d
4 1332, 1334 (9th Cir. 1990). Plaintiff will be provided an opportunity to file an amended complaint
5 to present a cognizable claim.

6 **D. CONCLUSION AND ORDER**

7 Plaintiff’s complaint fails to state a claim upon which relief may be granted under section
8 1983. The Court will provide Plaintiff with an opportunity to file an amended complaint. Akhtar v.
9 Mesa, 698 F.3d 1202, 1212-13 (9th Cir. 2012); Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

10 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
11 each named Defendant did that led to the deprivation of Plaintiff’s federal rights and liability may
12 not be imposed on supervisory personnel under the theory of mere *respondeat superior*, Iqbal, 556
13 U.S. at 676-77; Starr v. Baca, 652 F.3d 1202, 1205-07 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2101
14 (2012). Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a right to
15 relief above the speculative level. . . .” Twombly, 550 U.S. at 555 (citations omitted).

16 Finally, an amended complaint supercedes the original complaint, Lacey v. Maricopa
17 County, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be “complete in itself without
18 reference to the prior or superceded pleading,” Local Rule 220.

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ORDER

Accordingly, it is HEREBY ORDERED that:

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

IT IS SO ORDERED.

Dated: **December 2, 2014**

/s/ *Dennis L. Beck*
UNITED STATES MAGISTRATE JUDGE