

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHNNY LOPEZ,) Case No.: 1:13-cv-2005-MJS
Plaintiff,) ORDER DISMISSING PLAINTIFF'S
v.) COMPLAINT, WITH LEAVE TO AMEND,
JAMES A. YATES, et al.,) FOR FAILURE TO STATE A CLAIM
Defendants.) ECF No. 1
) AMENDED COMPLAINT DUE WITHIN
) THIRTY DAYS

On October 18, 2013, Johnny Lopez (“Plaintiff”), an individual proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983. (Compl., ECF No. 1.) Plaintiff has consented to Magistrate Judge jurisdiction. (ECF No. 6.)

Plaintiff's Complaint is now before the Court for screening. No other parties have appeared in the action.

I. 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,

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

5 A complaint must contain “a short and plain statement of the claim showing that the
6 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
7 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
8 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing
9 Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient
10 factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” Iqbal, 556
11 U.S. at 678 (quoting Twombly, 550 U.S. at 555). Facial plausibility demands more than the
12 mere possibility that a defendant committed misconduct and, while factual allegations are
13 accepted as true, legal conclusions are not. Iqbal, 556 U.S. at 678.

14 **II. PLAINTIFF’S CLAIMS**

15 Plaintiff is incarcerated at R.J. Donovan Correctional Facility. The events at issue in
16 his Complaint occurred in Pleasant Valley State Prison (“PVSP”). Plaintiff alleges that
17 Defendants violated Plaintiff’s rights under the Eighth Amendment by providing him with
18 inadequate medical care. Plaintiff names the following individuals as defendants: 1) James
19 A. Yates, warden, and 2) Inwumi Ola, medical doctor.

20 More specifically, Plaintiff’s alleges as follows:

21 Plaintiff is in his late sixties and has a number of medical problems. On March 14,
22 2012, Plaintiff asked Defendant Ola for a walker with a seat because he became dizzy after
23 walking several steps. Defendant Ola refused to fulfill Plaintiff’s request and instead
24 prescribed orthopedic shoes for Plaintiff.

25 Plaintiff asked for a walker again on March 27, 2012, but the request was again
26 denied.

1 Plaintiff fell on April 13, 2012, injuring his head, nose and right eye. Plaintiff was taken
2 to a hospital by helicopter. Plaintiff's medical conditions worsened. Plaintiff was provided
3 with a medical walker with a seat in the fall of 2012.

4 Defendant Yates should have reviewed prison policies to ensure that inmates
5 received adequate medical care. Defendant Ola acted with deliberate indifference by not
6 providing Plaintiff with a walker when Plaintiff asked for one.

7 Plaintiff asks for declaratory and injunctive relief, \$25,000 in compensatory damages
8 from each Defendant, and \$30,000 in punitive damages from each Defendant.

9 **III. ANALYSIS**

10 **A. 42 U.S.C. § 1983 Claims**

11 42 U.S.C. § 1983 "provides a cause of action for the 'deprivation of any rights,
12 privileges, or immunities secured by the Constitution and laws' of the United States." Wilder
13 v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). § 1983 is not
14 itself a source of substantive rights, but merely provides a method for vindicating federal
15 rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

16 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a
17 right secured by the Constitution or laws of the United States was violated, and (2) that the
18 alleged violation was committed by a person acting under the color of state law. See West v.
19 Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245 (9th Cir.
1987).

20 **B. Supervisory Liability**

21 Plaintiff alleges that Defendant Yates should be held liable for the inadequate medical
22 care he received. As warden of the prison, Defendant Yates should have reviewed prison
23 policies and ensured that inmates received proper medical treatment.

24 Under section 1983, Plaintiff must link the named Defendants to the participation in
25 the violation at issue. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County, Ariz., 609 F.3d
26 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir.
27 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Liability may not be imposed on
28 supervisory personnel under the theory of respondeat superior, Iqbal, 556 U.S. at 676-77;

Simmons, 609 F.3d at 1020-21; Ewing, 588 F.3d at 1235; Jones, 297 F.3d at 934, and as an administrator, Defendant Yates may only be held liable if he “participated in or directed the violations, or knew of the violations and failed to act to prevent them,” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989); accord Starr v. Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011), cert. denied, 132 S.Ct. 2101 (2012); Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009); Preschooler II v. Clark County School Board of Trustees, 479 F.3d 1175, 1182 (9th Cir. 2007); Harris v. Roderick, 126 F.3d 1189, 1204 (9th Cir. 1997). Some culpable action or inaction must be attributable to Defendant and while the creation or enforcement of, or acquiescence in, an unconstitutional policy, as alleged here, may support a claim, the policy must have been the moving force behind the violation. Starr, 652 F.3d at 1205; Jeffers v. Gomez, 267 F.3d 895, 914-15 (9th Cir. 2001); Redman v. County of San Diego, 942 F.2d 1435, 1446-47 (9th Cir. 1991); Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989).

Plaintiff attributes no action or inaction to Defendant Yates other than an alleged failure to have reviewed and improved prison procedures to ensure that inmates received proper medical care. Plaintiff does not identify any specific prison policy that caused or led to the Eighth Amendment violation alleged here. Thus, it appears that in truth Plaintiff has named Yates as a Defendant simply because of his overall supervisorial responsibilities as warden. For the reasons stated above, that is not a valid basis for a cognizable claim.

C. Eighth Amendment – Inadequate Medical Care

Plaintiff alleges that Defendant Ola subjected him to inadequate medical care in violation of the Eighth Amendment by not providing him with a walker when Plaintiff requested one.

“[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)). The two part test for deliberate indifference requires Plaintiff to show (1) “a serious medical need” by demonstrating that ‘failure to treat a prisoner’s condition could result in further significant injury or the unnecessary and wanton infliction of pain,’ and (2) “the defendant’s response to the need was deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith,

1 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller,
2 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (internal quotations omitted)).
3

4 In addition to a serious medical condition, Plaintiff must also establish deliberate
5 indifference. To show deliberate indifference, Plaintiff must show “a purposeful act or failure
6 to respond to a prisoner’s pain or possible medical need, and harm caused by the
7 indifference.” Id. (citing McGuckin, 974 F.2d at 1060). “Deliberate indifference is a high legal
8 standard.” Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004). “Under this standard, the
9 prison official must not only ‘be aware of the facts from which the inference could be drawn
10 that a substantial risk of serious harm exists,’ but that person ‘must also draw the inference.’”
11 Id. at 1057 (quoting Farmer v. Brennan, 511 U.S. 825, 837 (1994)). “If a prison official
12 should have been aware of the risk, but was not, then the official has not violated the Eighth
13 Amendment, no matter how severe the risk.” Id. (quoting Gibson, 290 F.3d at 1188).
14

15 Plaintiff has failed to make allegations sufficient to fulfill either element required for a
16 cognizable Eighth Amendment inadequate medical care claim. Plaintiff will be given leave to
17 amend this claim.
18

19 Plaintiff fails to explain why his “multiple medical problems” rise to the level of a
20 serious medical condition. It is conceivable, but not clear, that his dizziness was such as to
21 render him incapable of safely walking more than a few steps. But as pled, he alleges only
22 that he had some dizziness after walking several steps. He does not allege, for example,
23 that he had a history of falling from dizziness or anything else to support a conclusion that his
24 dizziness was indeed a serious condition. If Plaintiff chooses to amend, he should include
25 additional information about his ailments and why they would lead to further significant injury
26 or the infliction of additional pain if not properly treated.
27

28 Plaintiff also fails to explain how Defendant Ola was deliberately indifferent to his
medical condition. Plaintiff’s belief that he should have been provided with a walker instead
of orthodontic shoes reflects merely a disagreement with Defendant’s choice of treatment.
“A difference of opinion between a physician and the prisoner-or between medical
professionals-concerning what medical care is appropriate does not amount to deliberate
indifference.” Snow v. McDaniel, 681 F.3d 978, 987 (9th Cir. 2012) (citing Sanchez v. Vild,

891 F.2d 240, 242 (9th Cir. 1989)); Wilhelm v. Rotman, 680 F.3d 1113, 1122–23 (9th Cir. 2012) (citing Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1986)). Rather, Plaintiff “must show that the course of treatment the doctors chose was medically unacceptable under the circumstances and that the defendants chose this course in conscious disregard of an excessive risk to [his] health.” Snow, 681 F.3d at 988 (citing Jackson, 90 F.3d at 332) (internal quotation marks omitted). In his amended complaint, Plaintiff should explain why a medical walker was necessary and why Defendant Ola’s decision to provide other treatment was medically unacceptable and reflected deliberate indifference on the part of Defendant Ola.

D. Declaratory Relief

In addition to damages, Plaintiff seeks declaratory relief, but because his claims for damages necessarily entail a determination whether his rights were violated, his separate request for declaratory relief is subsumed by those claims. Rhodes v. Robinson, 408 F.3d 559, 565–66 n.8 (9th Cir. 2005) (quotation marks omitted). Therefore, this action properly proceeds as one for damages only.

E. Injunctive Relief

Plaintiff also seeks injunctive relief. He requests an injunction ordering Defendants to provide him with proper health required as required by law.

Injunctive relief is an “extraordinary remedy, never awarded as of right.” Winter v. Natural Res. Defense Council, 555 U.S. 7, 24 (2008). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” Id. (citing Munaf v. Geren, 553 U.S. 674, 689–90 (2008)).

Plaintiff has failed to show that he is likely to succeed on the merits since at this stage of the proceedings he has failed to state a cognizable claim.

In cases brought by prisoners involving conditions of confinement, the Prison Litigation Reform Act (“PLRA”) requires that any preliminary injunction “be narrowly drawn,

1 extend no further than necessary to correct the harm the court finds requires preliminary
2 relief, and be the least intrusive means necessary to correct the harm.” 18 U.S.C. § 3626(a).

3 Plaintiff fails to suggest a real and immediate threat of injury. See City of Los Angeles
4 v. Lyons, 461 U.S. 95, 101–102 (1983) (plaintiff must show “real and immediate” threat of
5 injury, and “past exposure to illegal conduct does not in itself show a present case or
6 controversy regarding injunctive relief . . . if unaccompanied by any continuing, present,
7 adverse effects.”). Plaintiff has failed to satisfy this element.

8 Plaintiff does not address the third or fourth elements, i.e., the balancing of equities
9 and public interest concerns. First, absent a showing sufficient to find harm to Plaintiff, there
10 is nothing to tip the balance of equities in Plaintiff's favor. Second, while the public has an
11 interest in providing the best practical prisoner care, the record before the Court does not
12 justify the Court substituting its judgment in these matters for that of the prison medical staff.

13 The various criteria not having been met, Plaintiff is not entitled to injunctive relief.
14 The Court will allow leave to amend. If Plaintiff chooses to amend, he must set forth
15 sufficient facts satisfying the above elements.

16 **IV. CONCLUSION AND ORDER**

17 Plaintiff's Complaint fails to state a claim upon which relief may be granted under §
18 1983. The Court will provide Plaintiff with an opportunity to amend to cure the deficiencies in
19 his claim. Lopez v. Smith, 203 F.3d at 1122, 1130 (9th Cir. 2000); Noll v. Carlson, 809 F.2d
20 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this suit by adding new,
21 unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir.
22 2007) (no “buckshot” complaints).

23 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state
24 what each named defendant did that led to the deprivation of Plaintiff=s constitutional rights,
25 Iqbal, 556 U.S. 676-677. Although accepted as true, the “[f]actual allegations must be
26 [sufficient] to raise a right to relief above the speculative level. . . .” Twombly, 550 U.S. at
555 (citations omitted).

27 Finally, an amended complaint supersedes the prior complaint, Forsyth v. Humana,
28 Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987),

1 and it must be "complete in itself without reference to the prior or superseded pleading,"
2 Local Rule 220.

3 Accordingly, it is HEREBY ORDERED that:

4 1. The Clerk's Office shall send Plaintiff a complaint form;
5 2. Plaintiff's Complaint, filed October 18, 2013, is dismissed for failure to state a
claim upon which relief may be granted under § 1983;

6 3. Within thirty (30) days from the date of service of this order, Plaintiff shall file an
amended complaint; and

7 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.

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10 IT IS SO ORDERED.

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12 Dated: February 20, 2014

13 /s/ *Michael J. Seng*
14 UNITED STATES MAGISTRATE JUDGE

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