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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TIMOTHY WAYNE ARNETT,
Plaintiff,
v.
WALGREEN COMPANY, INC.,
Defendant.

Case No. 1:13-cv-02066-LJO-MJS
**ORDER DENYING PLAINTIFF'S
MOTION TO CORRECT DOCKET**
(ECF No. 4)
**ORDER DENYING SERVICE AND
STRIKING PLAINTIFF'S NOTICE OF
SERVICE WAIVER**
(ECF No. 5)
**ORDER STRIKING COMPLAINT AND
REQUIRING PLAINTIFF TO FILE
COMPLAINT SIGNED BY EACH
UNREPRESENTED PARTY**
(ECF No. 1)
THIRTY (30) DAY DEADLINE

Plaintiff, Timothy Wayne Arnett, is proceeding pro se and in forma pauperis in this action. Plaintiff's Complaint is before the Court for screening. Also before the Court are Plaintiff's motions to correct the docket and for service by waiver.

I. SCREENING REQUIREMENT

The Court is required to screen complaints brought by individuals proceeding in

1 forma pauperis. “Notwithstanding any filing fee, or any portion thereof, that may have
2 been paid, the court shall dismiss the case at any time if the court determines that . . . the
3 action or appeal . . . is frivolous or malicious . . . [or] fails to state a claim upon which
4 relief may be granted; or seeks monetary relief against a defendant who is immune from
5 such relief.” 28 U.S.C. § 1915(e)(2)(B)(i-iii).

6 **II. DISCUSSION**

7 **A. Complaint Unsigned**

8 Every pleading must be signed personally by each unrepresented (in pro se) party.
9 Fed. R. Civ. P. 11(a). Plaintiff is proceeding in pro se. As he is not a licensed attorney,
10 Plaintiff does not have standing to assert the rights of any other person. Halet v. Wend
11 Inv. Co., 672 F.2d 1305, 1308 (9th Cir. 1982), citing Duke Power Co. v. Carolina
12 Environmental Study Group, 438 U.S. 59, 80 (1978) (party must assert [his] own rights
13 not those of third parties); accord Warth v. Seldin, 422 U.S. 490, 499 (1974). The Court
14 must strike an unsigned pleading. Fed. R. Civ. P. 11(a).

15 The Complaint is not signed by Plaintiff Karen Suzanne Page. Timothy Arnett
16 cannot sign on her behalf. Accordingly, the Complaint shall be stricken from the record.
17 Plaintiff has thirty days to file a complaint that complies with Federal Rule of Civil
18 Procedure 8(a)¹ and is signed by each unrepresented party.

19 **B. No Cognizable Claim**

20 Even if the current Complaint were signed, it sets forth no cognizable claim for
21 relief.

22 1. Wrongful Death Claim

23 The parents of a childless decedent may bring a wrongful death action where a

24 ¹ A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to
25 relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of
26 the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Ashcroft v.
27 Iqbal, 556 U.S. 662, 678 (2009), citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). While a
28 plaintiff’s allegations are taken as true, courts “are not required to indulge unwarranted inferences.” Doe I v.
Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009). To state a viable claim for relief, Plaintiff must set
forth factual allegations sufficient to state a plausible claim for relief. Iqbal, 556 U.S. at 678; Moss v. U.S.
Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls short of meeting
this plausibility standard. Iqbal, 556 U.S. at 678-79; Moss, 572 F.3d at 969.

1 wrongful act or neglect caused the death. Cal. Civ. Proc. Code § 377.60(a); Nelson v.
2 Count of Los Angeles, 113 Cal.App.4th 783, 789 (2003). Wrongful death actions are
3 deemed to be “joint, single and indivisible” and all successor in interest claimants must be
4 joined in the single action. Corder v. Corder, 41 Cal.4th 644, 652 (2007). The claimant
5 who brings the action is responsible for joining all other known claimants. Hall v. Superior
6 Court, 108 Cal.App.4th 706, 715 (2003).

7 Joint Plaintiff Karen Suzanne Page, the alleged mother of decedent, did not sign
8 the pleading signifying her joinder in this action. The pleading is deficient under the single
9 action rule.

10 2. Medical Malpractice

11 Plaintiff contends Defendant Walgreen Company, Inc., (“Walgreen”) wrongfully
12 dispensed prescription drugs to decedent August Arnett, Timothy Arnett’s son, leading to
13 complications from substance abuse, addiction and death.

14 a. Requirements for Survival Claim

15 A claim held by decedent and surviving his death may be brought by those real
16 parties in interest (CCP 367) who succeed him by will or intestacy. Cal. Civ. Proc. Code
17 §§ 377.10, 377.11, 377.30, 377.31; Olson v. Toy, 46 Cal.App.4th 818, 822 (1996).

18 Plaintiff desires to bring suit as successor in interest to decedent on an alleged state law
19 medical malpractice claim. In California, a successor in interest must execute and file an
20 affidavit or a declaration under penalty of perjury stating all of the following:

- 21 (1) The decedent's name.
- 22 (2) The date and place of the decedent's death.
- 23 (3) "No proceeding is now pending in California for administration
of the decedent's estate."
- 24 (4) If the decedent's estate was administered, a copy of the final
order showing the distribution of the decedent's cause of action to
25 the successor in interest.
- 26 (5) Either of the following, as appropriate, with facts in support
thereof:
 - 27 (A) "The affiant or declarant is the decedent's successor in
interest (as defined in Section 377.11 of the California Code of
Civil Procedure) and succeeds to the decedent's interest in the
28 action or proceeding."

1 (B) "The affiant or declarant is authorized to act on behalf of
2 the decedent's successor in interest (as defined in Section 377.11 of
the California Code of Civil Procedure) with respect to the decedent's
interest in the action or proceeding."

3 (6) "No other person has a superior right to commence the action
4 or proceeding or to be substituted for the decedent in the pending
action or proceeding."

5 (7) "The affiant or declarant affirms or declares under penalty of
perjury under the laws of the State of California that the foregoing
6 is true and correct."

7 (b) Where more than one person executes the affidavit or
8 declaration under this section, the statements required by
subdivision (a) shall be modified as appropriate to reflect that
fact.

9 (c) A certified copy of the decedent's death certificate shall be
10 attached to the affidavit or declaration.

11 Cal. Civ. Proc. Code § 377.32. The instant pleading does not satisfy these requirements.

12 b. Employer Liability

13 An employer may be liable for the torts of its agent or employee committed during
14 employment. See Cal. Civ. Code § 2338; Johnston v. Long, 30 Cal.2d 54, 61 (1947).

15 Generally, to establish a claim against an employer for the negligence of an
16 employee, a plaintiff must show that (1) there was an employment relationship between
17 the defendant, as employer, and the person or employee whose negligence caused the
18 plaintiff's injury, and (2) the defendant's employee was acting within the scope of his or
19 her employment when he or she negligently caused the plaintiff's injury. See e.g.,
20 Hartline v. Kaiser Foundation Hospitals, 132 Cal.App.4th 458, 465 (2005).

21 The Complaint does not allege any predicate act of negligence by a licensed
22 pharmacist employed by Walgreen or name a Walgreen pharmacist as a defendant.

23 **C. Motion to Correct Docket**

24 Plaintiff claims he represents named joint Plaintiff Karen Suzanne Page and
25 moves that the docket be corrected to reflect her appearance and the Complaint's
26 demand for jury trial (ECF No. 4). However, since Ms. Page did not sign the Complaint
27 and Plaintiff may not represent her, Ms. Page is not a party to this action. In any event,
28 the Complaint is to be stricken for the reasons noted above. There docket is not in need

1 of correction.

2 **D. Motion for Service and Notice of Service Waiver**

3 Plaintiff seeks service and filed a purported notice for Defendant's waiver of
4 personal service (ECF No. 5). However, for the reasons stated above the Complaint is
5 deficient, states no cognizable claim and is to be stricken. Service is not appropriate at
6 this time.

7 **III. ORDER**

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The motion to correct the docket (ECF No. 4) is DENIED,
- 10 2. The motion for service is DENIED and the notice of service waiver (ECF
11 No. 5) shall be STRICKEN from the record,
- 12 3. The Complaint (ECF No. 1) shall be STRICKEN from the record,
- 13 4. Within **thirty (30) days** from the date of service of this Order, Plaintiff must
14 file a complaint, consistent with this Order, signed by each unrepresented
15 party, and
- 16 5. The failure to comply with this Order may result in dismissal of the action.

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19 IT IS SO ORDERED.

20 Dated: March 31, 2014

/s/ Michael J. Seng
21 UNITED STATES MAGISTRATE JUDGE
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