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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GILBERT L. NADAULD,

Plaintiff,

vs.

M. FREEMAN, et al.,

Defendants

Case No. 1:14 cv 01831 GSA PC

ORDER DISMISSING COMPLAINT AND
GRANTING PLAINTIFF LEAVE TO FILE
AN 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. Plaintiff has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c).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 Plaintiff filed a consent to proceed before a magistrate judge on February 3, 2015 (ECF No. 6).

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**

15 Plaintiff, an inmate in the custody of the California Department of Corrections (CDCR) at
16 the California Health Care Facility at Stockton, brings this civil rights action against Dr. M.
17 Freeman, a physician at San Joaquin Hospital in Bakersfield and Dr. Li, a physician employed by
18 the CDCR at CHC Stockton. Plaintiff claims that he was subjected to inadequate medical care
19 such that it violated the Eighth Amendment prohibition on cruel and unusual punishment.

20 Plaintiff alleges that on June 6, 2014, he was admitted to San Joaquin Hospital and
21 treated for a bladder infection. Plaintiff alleges that “I received a skin flap. My wounds became
22 infected and I was given antibiotics, at which time the infection stopped.” On July 4, 2014,
23 Plaintiff’s wound again became infected, emitting a strong odor. At this time, Plaintiff was
24 housed at CHC Stockton. Plaintiff complained “over and over again” to Dr. Li and staff at CHC
25 Stockton. In October, Plaintiff was sent to an outside hospital in Oakland. Plaintiff alleges that
26 as a direct result of the delay in treatment, he now has bone cancer.

1 **A. Medical Care**

2 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an
3 inmate must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d
4 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 295 (1976)).
5 The two part test for deliberate indifference requires the plaintiff to show (1) “‘a serious medical
6 need’ by demonstrating that ‘failure to treat a prisoner’s condition could result in further
7 significant injury or the unnecessary and wanton infliction of pain,’” and (2) “‘the defendant’s
8 response to the need was deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v.
9 Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v.
10 Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (internal quotations omitted)). Deliberate
11 indifference is shown by “‘a purposeful act or failure to respond to a prisoner’s pain or possible
12 medical need, and harm caused by the indifference.” Id. (citing McGuckin, 974 F.2d at 1060).
13 Where a prisoner is alleging a delay in receiving medical treatment, the delay must have led to
14 further harm in order for the prisoner to make a claim of deliberate indifference to serious
15 medical needs. McGuckin at 1060 (citing Shapely v. Nevada Bd. of State Prison Comm’rs, 766
16 F.2d 404, 407 (9th Cir. 1985)).

17 Here, the Court finds that, as to Dr. Freeman, Plaintiff has failed to state a claim for relief.
18 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted under
19 color of state law and (2) the defendant deprived him of rights secured by the Constitution or
20 federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006). “A person
21 deprives another of a constitutional right, where that person ‘does an affirmative act, participates
22 in another’s affirmative acts, or omits to perform an act which [that person] is legally required to
23 do that causes the deprivation of which complaint is made.’” Hydrick v. Hunter, 500 F.3d 978,
24 988 (9th Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “[T]he
25 ‘requisite causal connection can be established not only by some kind of direct, personal
26 participation in the deprivation, but also by setting in motion a series of acts by others which the
27 actor knows or reasonably should know would cause others to inflict the constitutional injury.’”

1 Id. (quoting Johnson at 743-44). Plaintiff has not specifically charged Dr. Freeman with any
2 conduct indicating that he knew of and disregarded a serious risk to Plaintiff's health, resulting in
3 injury to Plaintiff. Plaintiff may not hold Dr. Freeman liable simply because he treated
4 Plaintiff's bladder infection. Plaintiff must allege facts indicating that Dr. Freeman was aware of
5 a specific harm to Plaintiff, and acted with deliberate indifference to that harm. Mere
6 'indifference,' 'negligence,' or 'medical malpractice' will not support this cause of action."
7 Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980)(citing Estelle, 429 U.S. at
8 105-06). See also Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004). Plaintiff has failed to
9 state a claim as to Dr. Freeman. He should therefore be dismissed. Plaintiff will, however, be
10 granted leave to file an amended complaint.

11 As to Dr. Li, Plaintiff is advised that the federal venue statute requires that a civil action,
12 other than one based on diversity jurisdiction, be brought only in "(1) a judicial district where
13 any defendant resides, if all defendants reside in the same state, (2) a judicial district in which a
14 substantial part of the events or omissions giving rise to the claim occurred, or a substantial part
15 of the property that is the subject of the action is situated, or (3) a judicial district in which any
16 defendant may be found, if there is no district in which the action may otherwise be brought." 28
17 U.S.C. § 1391(b). The decision to transfer venue of a civil action under § 1404(a) lies soundly
18 within the discretion of the trial court. Jones v. GNC Franchising, Inc., 211 F.3d 495, 498 (9th
19 Cir. 2000). CHC Stockton is located in San Joaquin County, in the Sacramento Division of this
20 District. Any claims against Dr. Li should therefore be brought in the Sacramento division of the
21 Eastern District of California. Should Plaintiff file an amended complaint with allegations of
22 conduct at CHC Stockton, the Court will transfer those claims to the Sacramento division of the
23 Eastern District.

24 **III. Conclusion and Order**

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

4 Plaintiff need not, however, set forth legal arguments in support of his claims. In order to
5 hold an individual defendant liable, Plaintiff must name the individual defendant, describe where
6 that defendant is employed and in what capacity, and explain how that defendant acted under
7 color of state law. Plaintiff should state clearly, in his or her own words, what happened.
8 Plaintiff must describe what each defendant, *by name*, did to violate the particular right described
9 by Plaintiff.

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

15 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
16 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565,
17 567 (9th Cir. 1987), and must be “complete in itself without reference to the prior or superceded
18 pleading,” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of action alleged in an
19 original complaint which are not alleged in an amended complaint are waived.” King, 814 F.2d
20 at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord
21 Forsyth, 114 F.3d at 1474.

22 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 23 1. Plaintiff’s complaint is dismissed, with leave to amend, for failure to state a
24 claim;
- 25 2. The Clerk’s Office shall send to Plaintiff a complaint form;
- 26 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file
27 an amended complaint;

- 1 4. Plaintiff may not add any new, unrelated claims to this action via his amended
2 complaint and any attempt to do so will result in an order striking the amended
3 complaint; and
4 5. If Plaintiff fails to file an amended complaint, the Court will dismiss this action,
5 with prejudice, for failure to state a claim.
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8 IT IS SO ORDERED.

9 Dated: February 18, 2015

10 /s/ Gary S. Austin

11 UNITED STATES MAGISTRATE JUDGE
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