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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

SIMON THORNTON,)	Case No.: 1:15-cv-00144-AWI-SAB (PC)
Plaintiff,)	
v.)	ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND FOR FAILURE TO STATE A COGNIZABLE CLAIM FOR RELIEF
L. DILEO, et al.,)	[ECF No. 1]
Defendants.)	
)	
)	

Plaintiff Simon Thornton is appearing pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the instant complaint on January 28, 2015.

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 “fails to state a claim on which relief may be granted,” or that “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,

1 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,
2 550 U.S. 544, 555 (2007)). Plaintiff must demonstrate that each named defendant personally
3 participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-677; Simmons v. Navajo County,
4 Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

5 Prisoners proceeding pro se in civil rights actions are still entitled to have their pleadings
6 liberally construed and to have any doubt resolved in their favor, but the pleading standard is now
7 higher, Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted), and to survive
8 screening, Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow
9 the Court to reasonably infer that each named defendant is liable for the misconduct alleged. Iqbal,
10 556 U.S. at 678-79; Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The “sheer
11 possibility that a defendant has acted unlawfully” is not sufficient, and “facts that are ‘merely
12 consistent with’ a defendant’s liability” falls short of satisfying the plausibility standard. Iqbal, 556
13 U.S. at 678; Moss, 572 F.3d at 969.

14 II.

15 COMPLAINT ALLEGATIONS

16 Plaintiff names Doctor L. Dileo, Chief Medical Officer S. Lopez, Assistant Warden A. Pineda
17 and Warden Martin D. Biter, as Defendants.

18 Plaintiff has nerve damage to his lower back from an incident sustained in 2006 prior to his
19 incarceration for which he was previously received medical treatment. Upon his incarceration, all
20 medical treatment seized. After a fall at Salinas Valley State Prison, Plaintiff was approved for
21 Morphine 30 mg. twice a day. However, prior to disbursement of the medication Plaintiff was
22 transferred to Kern Valley State Prison. Upon his arrival, Plaintiff was seen by Doctor Dileo who
23 denied authorization to continue Morphine. Plaintiff requested multiple times for treatment but was
24 denied. Due to deliberate indifference by Doctor Dileo, Plaintiff sustained a second fall injuring his
25 head and eye which has resulted in a permanent scar.

26 Plaintiff wrote to both S. Lopez and Warden Biter informing them of the matter. Plaintiff
27 received a response by S. Lopez who refused to act in this matter thereby being deliberately indifferent
28 to his medical issues. Plaintiff also received a different letter on behalf of Warden Biter signed by A.

1 Pineda also declining to take action in this matter thereby acting deliberating indifferent to Plaintiff's
2 medical needs.

3 III.

4 DISCUSSION

5 A. Deliberate Indifference to Serious Medical Need

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

19 Plaintiff's allegations that Doctors Dileo and Lopez denied Plaintiff's request for Morphine is
20 insufficient to give rise to a claim for deliberate indifference. Plaintiff attaches a medical evaluation
21 form to his complaint, which demonstrates that he was evaluated by Doctor Dileo on April 4, 2014,
22 and Plaintiff was advised of appropriate medical procedures to be conducted to treat his back problem.
23 (Compl. Ex. B.) Doctor Lopez responded to Plaintiff's letter of May 15, 2014, and advised Plaintiff
24 that "[f]urther review by PCP and med[ical] chart reveals you don't have a condition that warrants
25 narcotics, further studies in surgery [sic]." (Compl. Ex. D.) Plaintiff is not permitted to dictate his
26 medical treatment. Bowring v. Godwin, 551 F.2d 44, 47-48 (4th Cir. 1977). At most, Plaintiff has
27 shown that there is a mere difference of opinion regarding the course of medical treatment, which is
28 insufficient as a matter of law, to establish deliberate indifference. Thus, Plaintiff has failed to

1 establish that the prescribed course of treatment constituted deliberate indifference to a serious
2 medical condition.

3 **B. Supervisory Liability**

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

16 There is simply no basis to find that Warden Biter or Associate Warden Pineda were
17 responsible for determining the appropriate course of medical treatment for inmates at Kern Valley
18 State Prison. Biter and Pineda are not medical doctors and there are no factual allegations that they
19 have the responsibility of supervising medical personnel and decisions. Indeed, the May 23, 2014,
20 response to Plaintiff’s letter states as follows:

21 In reviewing your letter, it has been determined the issue(s) you raise is more
22 appropriately addressed through the medical process. Only authorized medical staff is
23 allowed access to your electronic Unit Health Record (eUHR). Therefore, while
24 custody staff will ensure emergency or ducated access to care, they are not authorized
25 to review your eUHR, make medical assessments or order particular treatments.

26 According to your Electronic Records Management File System (ERMS) records
27 (Central File) you have already submitted a CDCR 602HC Patient/Inmate Health Care
28 Appeal Form (KVSP HC 13034788) regarding this very issue. It was denied at the
First Level of review on December 24, 2013. You will note the response states, “If
dissatisfied you may request a Second Level of Review by following the instructions on
the appeal form.

1 (Compl. Ex. E.)

2 Plaintiff's allegations pertaining to Warden Biter and Associate Warden Pineda fails to show
3 they were personally involved in either Delio's and Lopez's alleged indifferent treatment of Plaintiff's
4 serious medical needs nor does it show any wrongful conduct on the part of Biter or Pineda that
5 connect them to the alleged constitutional violation. Accordingly, Plaintiff fails to set forth sufficient
6 factual allegations that either Warden Biter or Associate Warden Pineda were deliberately indifferent
7 to a serious medical need.

8 **IV.**

9 **CONCLUSION AND ORDER**

10 For the reasons stated, Plaintiff's complaint fails to state a claim upon which relief may be
11 granted. Plaintiff is granted leave to file an amended complaint within thirty (30) days. Noll v.
12 Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this suit by
13 adding new, unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir.
14 2007) (no "buckshot" complaints).

15 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each
16 named defendant did that led to the deprivation of Plaintiff's constitutional or other federal rights.
17 Iqbal, 556 U.S. 662, 678. "The inquiry into causation must be individualized and focus on the duties
18 and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a
19 constitutional deprivation." Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). Although accepted as
20 true, the "[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level .
21 . . ." Twombly, 550 U.S. at 555 (citations omitted).

22 Finally, an amended complaint supersedes the original complaint, Forsyth v. Humana, Inc.,
23 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and must be
24 "complete in itself without reference to the prior or superseded pleading," Local Rule 220. "All
25 causes of action alleged in an original complaint which are not alleged in an amended complaint are
26 waived." King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir.
27 1981)); accord Forsyth, 114 F.3d at 1474.

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Based on the foregoing, it is HEREBY ORDERED that:

1. The Clerk’s Office shall send Plaintiff an amended civil rights complaint form;
2. Plaintiff’s complaint, filed January 28, 2015, is dismissed for failure to state a claim;
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: April 24, 2015


UNITED STATES MAGISTRATE JUDGE