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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AMIR SHABAZZ,
Plaintiff,
vs.
JEFFREY A. BEARD, et al.,
Defendants.

1:15-cv-00881-GSA-PC
ORDER DISMISSING COMPLAINT
FOR PLAINTIFF'S VIOLATION OF
RULE 8(a), WITH LEAVE TO AMEND
(ECF No. 1; also resolves ECF No. 6.)
THIRTY-DAY DEADLINE TO FILE
FIRST AMENDED COMPLAINT NOT
EXCEEDING TWENTY-FIVE PAGES

I. BACKGROUND

Amir Shabazz ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on October 16, 2014, at the Sacramento Division of the United States District Court for the Eastern District of California. (ECF No. 1.) On June 10, 2015, the case was transferred to the Fresno Division of the Eastern District of California. (ECF No. 7.)

Plaintiff's Complaint is now before the court for screening.

II. 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).

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

7 **III. PLAINTIFF’S COMPLAINT**

8 Plaintiff is presently incarcerated at San Quentin State Prison in San Quentin,
9 California, in the custody of the California Department of Corrections and Rehabilitation
10 (CDCR). The events in the Complaint allegedly occurred at Pleasant Valley State Prison in
11 Coalinga, California, when Plaintiff was incarcerated there. Plaintiff names as defendants
12 Jeffrey A. Beard (Ph.D), Paul D. Brazelton, Edmund G. Brown, Matthew Cate, James D.
13 Hartley, Susan L. Hubbard, Deborah Hysen, Dr. Felix Igbinsosa, J. Clark Kelso, Tanya
14 Rothchild, Arnold Schwarzenegger, State of California, Dwight Winslow (MD), and Doe
15 Defendants 1-100.

16 **IV. RULE 8(a)**

17 Under federal notice pleading, a complaint is required to contain “a short and plain
18 statement of the claim showing that the pleader is entitled to relief” Fed. R. Civ. P.
19 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements
20 of a cause of action, supported by mere conclusory statements, do not suffice.” Ashcroft v.
21 Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly,
22 550 U.S. 544, 555, 127 S.Ct. 2955, 1964-65 (2007)). “While a plaintiff’s allegations are taken
23 as true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores,
24 Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). To
25 state a viable claim for relief, Plaintiff must set forth sufficient factual allegations sufficient to
26 state a plausible claim for relief. Iqbal, 556 U.S. at 679, 129 S.Ct. at 1950; Moss v. U.S. Secret
27 Service, 572 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls short of
28 meeting this plausibility standard. Id.

1 Plaintiff's Complaint consists of 72 typewritten pages divided into 275 paragraphs, with
2 55 pages of attached exhibits. The Complaint fails to comport with Rule 8(a)'s requirement of
3 "a short and plain statement of the claim." Fed. R. Civ. P. 8(a). Plaintiff's lengthy narrative
4 does not succinctly allege facts against the named defendants. Although the Federal Rules
5 adopt a flexible pleading policy, a complaint must give fair notice and state the elements of the
6 claim plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir.
7 1984). Therefore, Plaintiff's Complaint shall be dismissed for his violation of Rule 8(a).

8 Plaintiff shall be granted leave to file a First Amended Complaint not exceeding twenty-
9 five pages. Twenty-five pages is more than sufficient for Plaintiff to identify his claims and set
10 forth specific facts in support of those claims. Further, should Plaintiff choose to type the First
11 Amended Complaint, he is required to use double-spacing. The First Amended Complaint
12 shall be stricken from the record if it violates these limitations.

13 **V. CONCLUSION AND ORDER**

14 The court finds that Plaintiff's Complaint violates Rule 8(a). Plaintiff shall be granted
15 thirty days in which to file a First Amended Complaint curing the deficiencies described in this
16 order.

17 The amended complaint should be brief, but must state what each named defendant did
18 that led to the deprivation of Plaintiff's constitutional or other federal rights. Fed. R. Civ. P.
19 8(a); Iqbal, 556 U.S. at 676; Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). There is no
20 *respondeat superior* liability, and each defendant is only liable for his or her own misconduct.
21 Iqbal, 556 U.S. at 676-77. Plaintiff must set forth "sufficient factual matter ... to 'state a claim
22 that is plausible on its face.'" Id. at 677 (quoting Twombly, 550 U.S. at 555). Plaintiff must
23 also demonstrate that each defendant *personally* participated in the deprivation of his rights.
24 Jones, 297 F.3d at 934 (emphasis added). Although accepted as true, the "[f]actual allegations
25 must be [sufficient] to raise a right to relief above the speculative level" Twombly, 550 U.S.
26 at 554 (citations omitted).

27 Plaintiff should note that although he has been given the opportunity to amend, it is not
28 for the purpose of adding issues arising after October 16, 2014. Plaintiff is cautioned that he

1 may not change the nature of this suit by adding new, unrelated claims in his amended
2 complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

3 To the extent that Plaintiff seeks to bring an Eighth Amendment medical claim, the
4 following legal standard is included for guidance:

5 “[T]o maintain an Eighth Amendment claim based on prison medical
6 treatment, an inmate must show ‘deliberate indifference to serious medical
7 needs.’” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v.
8 Gamble, 429 U.S. 97, 104, 97 S.Ct. 285 (1976)). The two-part test for deliberate
9 indifference requires the plaintiff to show (1) “‘a serious medical need’ by
10 demonstrating that ‘failure to treat a prisoner’s condition could result in further
11 significant injury or the unnecessary and wanton infliction of pain,’” and (2) “the
12 defendant’s response to the need was deliberately indifferent.” Jett, 439 F.3d at
13 1096 (quoting McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992),
14 overruled on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136
15 (9th Cir. 1997) (en banc) (internal quotations omitted)). Deliberate indifference
16 is shown by “a purposeful act or failure to respond to a prisoner’s pain or
17 possible medical need, and harm caused by the indifference.” Id. (citing
18 McGuckin, 974 F.2d at 1060). Deliberate indifference may be manifested
19 “when prison officials deny, delay or intentionally interfere with medical
20 treatment, or it may be shown by the way in which prison physicians provide
21 medical care.” Id. Where a prisoner is alleging a delay in receiving medical
22 treatment, the delay must have led to further harm in order for the prisoner to
23 make a claim of deliberate indifference to serious medical needs. McGuckin at
24 1060 (citing Shapely v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407
25 (9th Cir. 1985)).

16 “Deliberate indifference is a high legal standard.” Toguchi v. Chung,
17 391 F.3d 1051, 1060 (9th Cir. 2004). “Under this standard, the prison official
18 must not only ‘be aware of the facts from which the inference could be drawn
19 that a substantial risk of serious harm exists,’ but that person ‘must also draw the
20 inference.’” Id. at 1057 (quoting Farmer v. Brennan, 511 U.S. 825, 837, 114
21 S.Ct. 1970 (1994)). “If a prison official should have been aware of the risk, but
22 was not, then the official has not violated the Eighth Amendment, no matter how
23 severe the risk.” Id. (quoting Gibson v. County of Washoe, Nevada, 290 F.3d
24 1175, 1188 (9th Cir. 2002)). “A showing of medical malpractice or negligence
25 is insufficient to establish a constitutional deprivation under the Eighth
26 Amendment. Id. at 1060. “[E]ven gross negligence is insufficient to establish a
27 constitutional violation.” Id. (citing Wood v. Housewright, 900 F.2d 1332, 1334
28 (9th Cir. 1990)).

23 “A difference of opinion between a prisoner-patient and prison medical
24 authorities regarding treatment does not give rise to a § 1983 claim.” Franklin v.
25 Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981) (internal citation omitted). To
26 prevail, plaintiff “must show that the course of treatment the doctors chosen was
27 medically unacceptable under the circumstances . . . and . . . that they chose this
28 course in conscious disregard of an excessive risk to plaintiff’s health.” Jackson
v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996) (internal citations omitted).

Plaintiff names Doe defendants in this action. Unidentified, or "John Doe" defendants
must be named or otherwise identified before service can go forward. “As a general rule, the

1 use of 'John Doe' to identify a defendant is not favored." Gillespie v. Civiletti, 629 F.2d 637,
2 642 (9th Cir. 1980). Plaintiff is advised that John Doe or Jane Doe defendants cannot be served
3 by the United States Marshal until Plaintiff has identified them as actual individuals and
4 amended his complaint to substitute names for John Doe or Jane Doe. For service to be
5 successful, the Marshal must be able to identify and locate defendants.

6 With respect to exhibits, while they are permissible, Fed. R. Civ. P. 10(c), they are not
7 necessary in the federal system of notice pleading, Fed. R. Civ. P. 8(a). The Court strongly
8 suggests to Plaintiff that they should not be submitted where (1) they serve only to confuse the
9 record and burden the Court, or (2) they are intended as future evidence. If this action reaches
10 a juncture at which the submission of evidence is appropriate and necessary (e.g., summary
11 judgment or trial), Plaintiff will have the opportunity at that time to submit his evidence.
12 Plaintiff is cautioned that it is not the duty of the court to look through all of his exhibits to
13 determine whether or not he has claims cognizable under § 1983. Rather, the court looks to the
14 factual allegations contained in Plaintiff's complaint to determine whether or not Plaintiff has
15 stated a cognizable claim for relief under § 1983.

16 Plaintiff is advised that an amended complaint supercedes the prior complaints, Lacey
17 v. Maricopa County, 693 F 3d. 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be complete
18 in itself without reference to the prior or superceded pleadings, Local Rule 220. Therefore, in
19 an amended complaint, as in an original complaint, each claim and the involvement of each
20 defendant must be sufficiently alleged. The amended complaint should be clearly and boldly
21 titled "First Amended Complaint," refer to the appropriate case number, and be an original
22 signed under penalty of perjury.

23 Based on the foregoing, it is HEREBY ORDERED that:

- 24 1. Plaintiff's Complaint, filed on October 16, 2014, is dismissed for violation of
25 Rule 8(a), with leave to amend;
- 26 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;

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3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a First Amended Complaint curing the deficiencies identified by the court in this order;
4. Plaintiff shall caption the amended complaint "First Amended Complaint" and refer to the case number 1:15-cv-00881-GSA-PC;
5. The First Amended Complaint may not exceed twenty-five pages in length, and it will be stricken from the record if it violates this page limitation;
6. If Plaintiff chooses to type the First Amended Complaint, he is required to use double-spacing;
7. Plaintiff may not add any new, unrelated claims to this action via his amended complaint and any attempt to do so will result in an order striking the amended complaint; and
8. Plaintiff's failure to comply with this order shall result in a recommendation that this action be dismissed in its entirety.

IT IS SO ORDERED.

Dated: **June 25, 2015**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE