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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID KNAPP,
Plaintiff,
vs.
VIRK, et al.,
Defendants.

1:15-cv-00961-GSA-PC

SCREENING ORDER

ORDER DISMISSING FIRST AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM, WITH LEAVE TO AMEND (ECF No. 19.)

THIRTY-DAY DEADLINE FOR PLAINTIFF TO FILE SECOND AMENDED COMPLAINT

ORDER FOR CLERK TO SEND PLAINTIFF A CIVIL COMPLAINT FORM

I. BACKGROUND

David Knapp (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. On June 25, 2015, Plaintiff filed the Complaint commencing this action. (ECF No. 1.)

On July 6, 2015, Plaintiff consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c), and no other parties have made an appearance. (ECF No. 5.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of California, the undersigned shall conduct any and all proceedings in the case until such time as reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

1 On November 4, 2015, the court dismissed the Complaint for failure to state a claim,
2 with leave to amend. (ECF No. 6.) On August 9, 2016, Plaintiff filed the First Amended
3 Complaint, which is now before the court for screening. (ECF No. 19.)

4 **II. SCREENING REQUIREMENT**

5 The court is required to screen complaints brought by prisoners seeking relief against a
6 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
7 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
8 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
9 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
10 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
11 paid, the court shall dismiss the case at any time if the court determines that the action or
12 appeal fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

13 **III. SUMMARY OF FIRST AMENDED COMPLAINT**

14 Plaintiff is presently incarcerated at Valley State Prison (VSP) in Chowchilla,
15 California, where the events at issue in the First Amended Complaint allegedly occurred.
16 Plaintiff names as defendants Pal Singh Virk (Chief Medical Executive (CME)), Dr. Mitchell
17 (CME), K. Phanh (Physician Assistant-C), and Dr. Lyle Griffith (M.D.), (collectively,
18 “Defendants”), who were employed at VSP during the relevant time period.

19 Plaintiff’s allegations follow, in their entirety:

20 The petitioner claims that all defendants listed herein are liable for damages to
21 petitioner for pain and suffering, medical negligence, and mental anguish caused
22 by the deliberate callousness that has been perpetrated towards petitioner at
23 VSP/Valley State Prison in Chowchilla, during his time of serious medical need
24 of medical attention. While at VSP the petitioner has experienced intentional
25 delay and interference [with] treatment and medications, which can only be
26 termed as intentional interference [with] issuance of medical services and
27 dispersing of prescribed pain medications. These considerable delays in
28 medication delivery and treatment as well as misdiagnoses have caused new
symptoms for the petitioner, as well as worsened his condition, which caused
petitioner to seek a self-help remedy to his suffering on several occasions. This
self-help remedy was in the form of several unsuccessful suicide attempts.
These considerable delays in treatment, misdiagnosis, and medication delivery
were direct results of the callous disregard for petitioner carried out by Dr. P.
Virk, Dr. Mitchell, K. Phanh, [and] Dr. Lyle Griffith.

(ECF No. 19 at 6.)

1 Plaintiff requests monetary damages and injunctive relief.

2 **IV. PLAINTIFF’S CLAIMS**

3 The Civil Rights Act under which this action was filed provides:

4 Every person who, under color of any statute, ordinance, regulation, custom, or
5 usage, of any State or Territory or the District of Columbia, subjects, or causes
6 to be subjected, any citizen of the United States or other person within the
7 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
8 secured by the Constitution and laws, shall be liable to the party injured in an
9 action at law, suit in equity, or other proper proceeding for redress

10 42 U.S.C. § 1983.

11 “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a
12 method for vindicating federal rights elsewhere conferred.’” Graham v. Connor, 490 U.S. 386,
13 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also Chapman
14 v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles, 697
15 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012);
16 Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006). “To the extent that the violation of
17 a state law amounts to the deprivation of a state-created interest that reaches beyond that
18 guaranteed by the federal Constitution, Section 1983 offers no redress.” Id.

19 To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under
20 color of state law and (2) the defendant deprived him or her of rights secured by the
21 Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.
22 2006); see also Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing
23 “under color of state law”). A person deprives another of a constitutional right, “within the
24 meaning of § 1983, ‘if he does an affirmative act, participates in another’s affirmative act, or
25 omits to perform an act which he is legally required to do that causes the deprivation of which
26 complaint is made.’” Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th
27 Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite
28 causal connection may be established when an official sets in motion a ‘series of acts by others
which the actor knows or reasonably should know would cause others to inflict’ constitutional
harms.” Preschooler II, 479 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of

1 causation “closely resembles the standard ‘foreseeability’ formulation of proximate cause.”
2 Arnold v. Int’l Bus. Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City
3 of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008).

4 **A. Rule 8(a) of the Federal Rules of Civil Procedure**

5 Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
6 exceptions, none of which apply to § 1983 actions. Swierkiewicz v. Sorema, N.A., 534 U.S.
7 506, 512 (2002). Under federal notice pleading, a complaint is required to contain “a short and
8 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.
9 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements
10 of a cause of action, supported by mere conclusory statements, do not suffice.” Ashcroft v.
11 Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555
12 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
13 unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
14 (internal quotation marks and citation omitted). To state a viable claim, Plaintiff must set forth
15 “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
16 face.’” Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir.
17 2009). While factual allegations are accepted as true, legal conclusions are not. Id. The mere
18 possibility of misconduct falls short of meeting this plausibility standard.

19 The court finds the allegations in Plaintiff’s First Amended Complaint to be vague and
20 conclusory. The First Amended Complaint lumps defendants together and fails to adequately
21 distinguish claims and alleged wrongs among defendants. Plaintiff must allege with at least
22 some degree of particularity overt acts which defendants engaged in that support Plaintiff’s
23 claim. Sherman v. Yakahi, 549 F.2d 1287, 1290 (9th Cir. 1977); also see McHenry v. Renne,
24 84 F.3d 1172, 1178 (9th Cir. 1996) (a complaint must make clear “who is being sued, for what
25 relief, and on what theory, with enough detail to guide discovery”). Plaintiff’s complaint must
26 give each “defendant fair notice of what the plaintiff’s claim is and the grounds upon which it
27 rests.” Swierkiewicz, 534 U.S. at 512.

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1 Plaintiff was advised in the court’s prior screening order that in order to state a claim,
2 he must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible
3 on its face,’” (ECF No. 6 at 2:8-9), allegations that link the actions or omissions of each named
4 defendant to a violation of his rights (Id. at 2:14-15), and factual allegations sufficient to raise a
5 right to relief above the speculative level. (Id. at 7:24-25). Plaintiff has not satisfied these
6 requirements in the First Amended Complaint. In fact, Plaintiff’s original Complaint alleged
7 more factual information than the First Amended Complaint.

8 Because Plaintiff has failed to comply with the requirements of Rule 8(a), the First
9 Amended Complaint shall be dismissed. The court will, however, grant leave to file an
10 amended complaint.

11 **B. Eighth Amendment Medical Claim**

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

1 “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051,
2 1060 (9th Cir. 2004). “Under this standard, the prison official must not only ‘be aware of the
3 facts from which the inference could be drawn that a substantial risk of serious harm exists,’
4 but that person ‘must also draw the inference.’” Id. at 1057 (quoting Farmer v. Brennan, 511
5 U.S. 825, 837 (1994)). “‘If a prison official should have been aware of the risk, but was not,
6 then the official has not violated the Eighth Amendment, no matter how severe the risk.’” Id.
7 (quoting Gibson v. County of Washoe, Nevada, 290 F.3d 1175, 1188 (9th Cir. 2002)). “A
8 showing of medical malpractice or negligence is insufficient to establish a constitutional
9 deprivation under the Eighth Amendment.” Id. at 1060. “[E]ven gross negligence is
10 insufficient to establish a constitutional violation.” Id. (citing Wood v. Housewright, 900 F.2d
11 1332, 1334 (9th Cir. 1990)).

12 “A difference of opinion between a prisoner-patient and prison medical authorities
13 regarding treatment does not give rise to a § 1983 claim.” Franklin v. Oregon, 662 F.2d 1337,
14 1344 (9th Cir. 1981) (internal citation omitted). To prevail, a plaintiff “must show that the
15 course of treatment the doctors chose was medically unacceptable under the circumstances . . .
16 and . . . that they chose this course in conscious disregard of an excessive risk to plaintiff’s
17 health.” Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996) (internal citations omitted).

18 Plaintiff’s allegations of pain and suffering, delays in receiving pain medication, and his
19 attempts to commit suicide due to his suffering are sufficient to demonstrate that he has serious
20 medical needs. However, Plaintiff has not alleged facts from which the court can infer that
21 any of the Defendants were aware of a substantial risk of serious harm to Plaintiff’s health and
22 deliberately and unreasonably disregarded the risk, causing him harm. Plaintiff uses
23 conclusory language to allege that all of the Defendants acted with callous disregard, but this is
24 not sufficient to state a claim against any of the individual Defendants.

25 Therefore, Plaintiff fails to state an Eighth Amendment medical claim in the First
26 Amended Complaint.

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1 canker sore *de minimis*); see also Pierce v. County of Orange, 526 F.3d 1190, 1211-13 (9th Cir.
2 2008) (bladder infections and bed sores, which pose significant pain and health risks to
3 paraplegics such as the plaintiff, were not *de minimis*). The physical injury requirement applies
4 only to claims for mental or emotional injuries and does not bar claims for compensatory,
5 nominal, or punitive damages. Id. at 630. Therefore, Plaintiff is not entitled to monetary
6 damages in this case for emotional distress unless he also shows a physical injury.

7 **V. CONCLUSION AND ORDER**

8 The court finds that Plaintiff's First Amended Complaint fails to state any claim upon
9 which relief may be granted. The court will dismiss the First Amended Complaint and give
10 Plaintiff leave to file a Second Amended Complaint addressing the issues described above.

11 Under Rule 15(a) of the Federal Rules of Civil Procedure, "[t]he court should freely
12 give leave to amend when justice so requires." Accordingly, the court will provide Plaintiff an
13 opportunity to file an amended complaint curing the deficiencies identified above. Lopez v.
14 Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Plaintiff is granted leave to file the Second
15 Amended Complaint within thirty days.

16 The Second Amended Complaint must allege facts showing what each named defendant
17 did that led to the deprivation of Plaintiff's constitutional rights. Fed. R. Civ. P. 8(a); Iqbal,
18 556 U.S. at 678; Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff must
19 demonstrate that each defendant *personally* participated in the deprivation of his rights by their
20 actions. Id. at 676-77 (emphasis added).

21 Plaintiff should note that although he has been given the opportunity to amend, it is not
22 for the purpose of changing the nature of this suit or adding unrelated claims. George v. Smith,
23 507 F.3d 605, 607 (no "buckshot" complaints).

24 Plaintiff is advised that an amended complaint supercedes the original complaint, Lacey
25 v. Maricopa County, 693 F 3d. 896, 907 n.1 (9th Cir. 2012) (*en banc*), and it must be complete
26 in itself without reference to the prior or superceded pleading, Local Rule 220. Therefore, in an
27 amended complaint, as in an original complaint, each claim and the involvement of each
28 defendant must be sufficiently alleged. The amended complaint should be clearly and boldly

1 titled "Second Amended Complaint," refer to the appropriate case number, and be an original
2 signed under penalty of perjury.

3 Based on the foregoing, it is **HEREBY ORDERED** that:

- 4 1. Plaintiff's First Amended Complaint is dismissed for failure to state a claim,
5 with leave to amend;
- 6 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 7 3. Plaintiff is granted leave to file a Second Amended Complaint curing the
8 deficiencies identified by the court in this order, within **thirty (30) days** from
9 the date of service of this order;
- 10 4. Plaintiff shall caption the amended complaint "Second Amended Complaint"
11 and refer to the case number 1:15-cv-00961-GSA-PC; and
- 12 5. If Plaintiff fails to file a Second Amended Complaint within thirty days, this
13 case shall be dismissed for failure to state a claim.

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15 IT IS SO ORDERED.

16 Dated: March 30, 2017

/s/ Gary S. Austin
17 UNITED STATES MAGISTRATE JUDGE
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