

1 monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

2 A complaint must contain “a short and plain statement of the claim showing that the pleader is
3 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
4 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
5 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,
6 550 U.S. 544, 555 (2007)). Plaintiff must demonstrate that each named defendant personally
7 participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-677; Simmons v. Navajo County,
8 Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

9 Prisoners proceeding pro se in civil rights actions are still entitled to have their pleadings
10 liberally construed and to have any doubt resolved in their favor, but the pleading standard is now
11 higher, Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted), and to survive
12 screening, Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow
13 the Court to reasonably infer that each named defendant is liable for the misconduct alleged. Iqbal,
14 556 U.S. at 678-79; Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The “sheer
15 possibility that a defendant has acted unlawfully” is not sufficient, and “facts that are ‘merely
16 consistent with’ a defendant’s liability” falls short of satisfying the plausibility standard. Iqbal, 556
17 U.S. at 678; Moss, 572 F.3d at 969.

18 II.

19 COMPLAINT ALLEGATIONS

20 In the first amended complaint, Plaintiff names Martha Trevino, intake nurse at California
21 State Prison-Wasco as the sole Defendant.

22 Plaintiff is a 52 year old African-American male who is incarcerated at the California Health
23 Care Facility in Stockton. Plaintiff is a hemodialysis patient with anemia, Hx Peritonitis, Neuropathy,
24 and eye blindness to both eyes.

25 On November 26, 2012, Plaintiff was housed in the Los Angeles County jail in the quality
26 management comprehensive care until for Plaintiff’s serious medical needs.

1 On April 16, 2013, Registered Nurse, Angela Regaldo contacted Martha Trevino, a nurse at
2 California State Prison in Wasco, and asked nurse Trevino if Wasco could provide Plaintiff dialysis
3 care four times a day. Trevino advised nurse Regaldo that Wasco had an on-site dialysis center.

4 On April 22, 2013, Plaintiff was transferred to Wasco, and was in need of dialysis treatment.
5 Plaintiff became severely sick and was sent to the Wasco prison emergency clinic in need to
6 emergency transportation to the nearest outside hospital-Mercy Hospital in Bakersfield, California.

7 II.

8 DISCUSSION

9 A. Deliberate Indifference to a Serious Medical Need

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

23 Plaintiff contends that Defendant Trevino was deliberately indifferent by transferring him from
24 the Los Angeles County Jail to the California State Prison in Wasco; however, the fact that Plaintiff
25 was transferred to Wasco prison which does not provide peritoneal dialysis at the facility does not
26 alone give rise to a level of a constitutional violation. Plaintiff essentially argues that his rights under
27 the Eighth Amendment were violated because he did not receive daily PD treatment at the prison
28 facility in which he was housed. Although the Constitution mandates that the State provide a

1 prisoner adequate medical treatment, such right does not equate to entitlement to receive medical
2 treatment in the same facility as the inmate is housed. As stated in the Court’s February 9, 2016 order,
3 the exhibits attached to Plaintiff’s original complaint demonstrate that he was provided continuous and
4 ongoing dialysis treatment. (ECF No. 7, Order at 6.) Plaintiff has failed to present sufficient facts to
5 support a finding that Defendant Trevino denied, delayed, or interfered with Plaintiff’s care and
6 treatment. The fact that Plaintiff disagrees with the medical care he is receiving is not sufficient to
7 state a cognizable constitutional violation. Accordingly, Plaintiff fails to state a cognizable claim for
8 deliberate indifference based on the lack of dialysis at the facility in which he is housed.

9 **III.**

10 **CONCLUSION AND ORDER**

11 The Court finds that Plaintiff’s first amended complaint fails to state any cognizable claims
12 upon which relief may be granted under § 1983. Plaintiff was previously notified of the applicable
13 legal standards and the first amended complaint presents fewer factual allegations, and Plaintiff simply
14 re-states his claim that Defendant Trevino was deliberately indifferent by misstating that Wasco
15 facility had on-site dialysis treatment. Based upon the allegations in Plaintiff’s original and first
16 amended, the Court is persuaded that Plaintiff is unable to allege any additional facts that would
17 support a claim for failure to protect Plaintiff in violation of the Eighth Amendment, and further
18 amendment would be futile. See Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) (“A district
19 court may deny leave to amend when amendment would be futile.”) Based on the nature of the
20 deficiencies at issue, the Court finds that further leave to amend is not warranted. Lopez v. Smith, 203
21 F.3d 1122, 1130 (9th. Cir. 2000); Noll v. Carlson, 809 F.2d 1446-1449 (9th Cir. 1987).

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Accordingly, IT IS HEREBY ORDERED that:

1. This action is dismissed for Plaintiff's failure to state a claim upon which relief may be granted;
2. This action count as a strike pursuant to 28 U.S.C. § 1915(g); and
3. The Clerk of Court is directed to close this case.

IT IS SO ORDERED.

Dated: May 17, 2016



UNITED STATES MAGISTRATE JUDGE