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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CHRISTY V. MOORE,
Plaintiff,
v.
BEARD, et al.,
Defendants.

Case No. 1:16-cv-00145-DAD-SKO (PC)

**ORDER REQUIRING PLAINTIFF TO EITHER
FILE AMENDED COMPLAINT OR NOTIFY
COURT OF WILLINGNESS TO PROCEED ONLY
ON EIGHTH AMENDMENT CLAIM AGAINST
OFFICER ARDON**

(Doc. 1)

TWENTY-ONE (21) DAY DEADLINE

INTRODUCTION

A. Background

Plaintiff, Christy V. Moore, is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

B. 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, malicious, 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); 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). If an action is dismissed on one of these three basis, a strike is imposed

1 per 28 U.S.C. § 1915(g). An inmate who has had three or more prior actions or appeals dismissed
2 as frivolous, malicious, or for failure to state a claim upon which relief may be granted, and has
3 not alleged imminent danger of serious physical injury does not qualify to proceed *in forma*
4 *pauperis*. See 28 U.S.C. § 1915(g); *Richey v. Dahne*, 807 F.3d 1201, 1208 (9th Cir. 2015).

5 Section 1983 “provides a cause of action for the deprivation of any rights, privileges, or
6 immunities secured by the Constitution and laws of the United States.” *Wilder v. Virginia Hosp.*
7 *Ass’n*, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not itself a source of
8 substantive rights, but merely provides a method for vindicating federal rights conferred
9 elsewhere. *Graham v. Connor*, 490 U.S. 386, 393-94 (1989).

10 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a
11 right secured by the Constitution or laws of the United States was violated and (2) that the alleged
12 violation was committed by a person acting under the color of state law. See *West v. Atkins*, 487
13 U.S. 42, 48 (1988); *Ketchum v. Alameda Cnty.*, 811 F.2d 1243, 1245 (9th Cir. 1987).

14 **C. Summary of the Complaint**

15 Plaintiff complains of acts that occurred while she was housed at the Shafter Modified
16 Community Correctional Facility (“SMCCF”) in Shafter, California. Plaintiff names the City of
17 Shafter Department of Corrections and Officer Ardon as defendants in this action. Plaintiff seeks
18 monetary damages.

19 Plaintiff alleges that Officer Ardon entered her medical cell and awakened her at 2:40 a.m.
20 on an unspecified date. Officer Ardon questioned Plaintiff about the wheelchair in her cell the
21 facility doctor had prescribed for Plaintiff. Plaintiff’s medical condition necessitated the
22 wheelchair for all movement as she needed support and was not even able to use the toilet in her
23 cell without it. Officer Ardon tried to make Plaintiff stand, but Plaintiff was physically unable to
24 comply. Officer Ardon then took the wheelchair from Plaintiff’s cell, saying she was removing it
25 so Plaintiff would not hurt herself on it. Without the wheelchair, Plaintiff fell and was hurt,
26 requiring medical attention at an outside hospital. Other correctional staff noticed that the
27 wheelchair had been removed and replaced it.

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1 Plaintiff's allegations state a cognizable claim under the Eighth Amendment against
2 Officer Ardon on which she should be allowed to proceed. However, as discussed in greater
3 detail below, Plaintiff fails to state any other cognizable claims against the other named
4 defendant.

5 **D. Pleading Requirements**

6 **1. Federal Rule of Civil Procedure 8(a)**

7 "Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited
8 exceptions," none of which applies to section 1983 actions. *Swierkiewicz v. Sorema N. A.*, 534
9 U.S. 506, 512 (2002); Fed. R. Civ. Pro. 8(a). A complaint must contain "a short and plain
10 statement of the claim showing that the pleader is entitled to relief" Fed. R. Civ. Pro. 8(a).
11 "Such a statement must simply give the defendant fair notice of what the plaintiff's claim is and
12 the grounds upon which it rests." *Swierkiewicz*, 534 U.S. at 512.

13 Violations of Rule 8, at both ends of the spectrum, warrant dismissal. A violation occurs
14 when a pleading says too little -- the baseline threshold of factual and legal allegations required
15 was the central issue in the *Iqbal* line of cases. *See, e.g., Ashcroft v. Iqbal*, 556 U.S. 662, 678,
16 129 S.Ct. 1937 (2009). The Rule is also violated, though, when a pleading says *too much*.
17 *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1058 (9th Cir.2011) ("[W]e
18 have never held -- and we know of no authority supporting the proposition -- that a pleading may
19 be of unlimited length and opacity. Our cases instruct otherwise.") (citing cases); *see also*
20 *McHenry v. Renne*, 84 F.3d 1172, 1179–80 (9th Cir.1996) (affirming a dismissal under Rule 8,
21 and recognizing that "[p]rolix, confusing complaints such as the ones plaintiffs filed in this case
22 impose unfair burdens on litigants and judges").

23 Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a
24 cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556
25 U.S. 662, 678 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
26 Plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a claim that is
27 plausible on its face.'" *Iqbal*, 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual
28 allegations are accepted as true, but legal conclusions are not. *Iqbal*, at 678; *see also Moss v. U.S.*

1 *Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009); *Twombly*, 550 U.S. at 556-557.

2 While “plaintiffs [now] face a higher burden of pleadings facts . . .,” *Al-Kidd v. Ashcroft*,
3 580 F.3d 949, 977 (9th Cir. 2009), the pleadings of pro se prisoners are still construed liberally
4 and are afforded the benefit of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).
5 However, “the liberal pleading standard . . . applies only to a plaintiff’s factual allegations,” *Neitze*
6 *v. Williams*, 490 U.S. 319, 330 n.9 (1989), “a liberal interpretation of a civil rights complaint may
7 not supply essential elements of the claim that were not initially pled,” *Bruns v. Nat’l Credit*
8 *Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) quoting *Ivey v. Bd. of Regents*, 673 F.2d 266,
9 268 (9th Cir. 1982), and courts are not required to indulge unwarranted inferences, *Doe I v. Wal-*
10 *Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation
11 omitted). The “sheer possibility that a defendant has acted unlawfully” is not sufficient, and
12 “facts that are ‘merely consistent with’ a defendant’s liability” fall short of satisfying the
13 plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949; *Moss*, 572 F.3d at 969.

14 Further, “repeated and knowing violations of Federal Rule of Civil Procedure 8(a)’s ‘short
15 and plain statement’ requirement are strikes as ‘fail[ures] to state a claim,’ 28 U.S.C. § 1915(g),
16 when the opportunity to correct the pleadings has been afforded and there has been no
17 modification within a reasonable time.” *Knapp v. Hogan*, 738 F.3d 1106, 1108-09 (9th Cir.
18 2013).

19 DISCUSSION

20 **A. Plaintiff’s Claims**

21 **1. Deliberate Indifference to Serious Medical Needs**

22 Prison officials violate the Eighth Amendment if they are “deliberate[ly] indifferen[t] to [a
23 prisoner’s] serious medical needs.” *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). “A medical need
24 is serious if failure to treat it will result in ‘significant injury or the unnecessary and wanton
25 infliction of pain.’ ” *Peralta v. Dillard*, 744 F.3d 1076, 1081-82 (2014) (quoting *Jett v. Penner*,
26 439 F.3d 1091, 1096 (9th Cir.2006) (quoting *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th
27 Cir.1992), overruled on other grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th
28 Cir.1997) (en banc))

1 To maintain an Eighth Amendment claim based on medical care in prison, a plaintiff must
2 first “show a serious medical need by demonstrating that failure to treat a prisoner’s condition
3 could result in further significant injury or the unnecessary and wanton infliction of pain. Second,
4 the plaintiff must show the defendants’ response to the need was deliberately indifferent.”
5 *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012) (quoting *Jett v. Penner*, 439 F.3d 1091,
6 1096 (9th Cir. 2006) (quotation marks omitted)).

7 “Indications that a plaintiff has a serious medical need include the existence of an injury
8 that a reasonable doctor or patient would find important and worthy of comment or treatment; the
9 presence of a medical condition that significantly affects an individual’s daily activities; or the
10 existence of chronic or substantial pain.” *Colwell v. Bannister*, 763 F.3d 1060, 1066 (9th Cir.
11 2014) (citation and internal quotation marks omitted); *accord Wilhelm v. Rotman*, 680 F.3d 1113,
12 1122 (9th Cir. 2012); *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000). For screening
13 purposes, Plaintiff’s inability to move without a wheelchair that had been prescribed for her by the
14 facility physician is accepted as serious medical needs.

15 Deliberate indifference is “a state of mind more blameworthy than negligence” and
16 “requires ‘more than ordinary lack of due care for the prisoner’s interests or safety.’ ” *Farmer v.*
17 *Brennan*, 511 U.S. 825, 835 (1994) (quoting *Whitley*, 475 U.S. at 319). Deliberate indifference is
18 shown where a prison official “knows that inmates face a substantial risk of serious harm and
19 disregards that risk by failing to take reasonable measures to abate it.” *Id.*, at 847. Deliberate
20 indifference is a high legal standard.” *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir.2004).
21 “Under this standard, the prison official must not only ‘be aware of the facts from which the
22 inference could be drawn that a substantial risk of serious harm exists,’ but that person ‘must also
23 draw the inference.’ ” *Id.* at 1057 (quoting *Farmer*, 511 U.S. at 837). “If a prison official should
24 have been aware of the risk, but was not, then the official has not violated the Eighth
25 Amendment, no matter how severe the risk.” *Id.* (quoting *Gibson v. County of Washoe, Nevada*,
26 290 F.3d 1175, 1188 (9th Cir. 2002)).

27 “Denial of medical attention to prisoners constitutes an [E]ighth [A]mendment violation if
28 the denial amounts to deliberate indifference to serious medical needs of the prisoners.”

1 *Toussaint v. McCarthy* 801 F.2d 1080, 1111 (9th Cir. 1986) *abrogated in part on other grounds*
 2 *by Sandin v. Conner*, 515 U.S. 472 (1995) (citing *Estelle*, 429 U.S. at 104-05); *see also Jett v.*
 3 *Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006); *Clement v. Gomez*, 298 F.3d 898, 905 (9th Cir.
 4 2002); *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002); *Lopez v. Smith* 203 F.3d 1122, 1131
 5 (9th Cir. 2000) (en banc); *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996) *McGuckin* 974
 6 F.2d at 1059. Delay of, or interference with, medical treatment can also amount to deliberate
 7 indifference. *See Jett*, 439 F.3d at 1096; *Clement*, 298 F.3d at 905; *Hallett*, 296 F.3d at 744;
 8 *Lopez*, 203 F.3d at 1131; *Jackson*, 90 F.3d at 332; *McGuckin* 974 F.2d at 1059; *Hutchinson v.*
 9 *United States*, 838 F.2d 390, 394 (9th Cir. 1988).

10 Officer Ardon's 2:40 a.m. removal of the wheelchair that had been prescribed for Plaintiff
 11 and was in her medical cell, constitutes an interference with a prescribed medical appliance that
 12 amounts to a cognizable deliberate indifference claim under the Eighth Amendment.¹

13 2. Due Process

14 The Fourteenth Amendment's Due Process Clause protects persons against deprivations
 15 of life, liberty, or property; and those who seek to invoke its procedural protection must establish
 16 that one of these interests is at stake." *Wilkinson v. Austin*, 545 U.S. 209, 221, 125 S.Ct. 2384
 17 (2005). Prisoners have a protected interest in their personal property, *Hansen v. May*, 502 F.2d
 18 728, 730 (9th Cir. 1974), but the procedural component of the Due Process Clause is not violated
 19 by a random, unauthorized deprivation of property if the state provides an adequate post-
 20 deprivation remedy, *Hudson v. Palmer*, 468 U.S. 517, 533, 104 S.Ct. 3194, 3204 (1984); *Barnett*
 21 *v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994). Rather, the Due Process Clause is violated only
 22 when the agency "prescribes and enforces forfeitures of property without underlying statutory
 23 authority and competent procedural protections." *Nevada Dept. of Corrections v. Greene*, 648
 24 F.3d 1014, 1019 (9th Cir. 2011) (citing *Vance v. Barrett*, 345 F.3d 1083, 1090 (9th Cir. 2003))
 25 (internal quotations omitted).

26
 27 ¹ Although Plaintiff alleges a separate claim for "Abuse of Discretion," (Doc. 1, p. 4), there is no legal
 28 basis under section 1983 for such a claim. Deliberate indifference under the Eighth Amendment is the
 appropriate claim for Plaintiff's allegations.

1 In this case, Officer Ardon's removal of Plaintiff's prescribed wheelchair does not give
2 rise to a viable due process claim under section 1983. To the extent this event can be
3 characterized as a personal property deprivation, it was an unauthorized taking for which Plaintiff
4 may pursue remedies under California law.² A claim for deprivation of personal property under
5 federal law fails as a matter of law. *Barnett*, 31 F.3d at 816-17 (citing Cal. Gov't Code §§810-
6 895). It is more-likely that the wheelchair which Officer Ardon removed from Plaintiff's cell in
7 the early morning hours was state property that had been provided for Plaintiff's use, which is
8 properly addressed as a claim for deliberate indifference under the Eighth Amendment.

9 **3. Municipal Liability -- City of Shafter Department of Corrections**

10 A local government entity is liable under § 1983 when 'action pursuant to official
11 municipal policy of some nature cause[s] a constitutional tort.' " *Oviatt v. Pearce*, 954 F.2d 1470,
12 1473-74 (9th Cir.1992) (quoting *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691, (1978)). In
13 addition, a local governmental entity may be liable if it has a "policy of inaction and such inaction
14 amounts to a failure to protect constitutional rights." *Id.* at 1474 (citing *City of Canton v. Harris*,
15 489 U.S. 378, 388 (1989)); *see also Monell*, 436 U.S. at 690-91. The custom or policy of
16 inaction, however, must be the result of a "conscious," *City of Canton*, 489 U.S. at 389, or "
17 'deliberate choice to follow a course of action . . . made from among various alternatives by the
18 official or officials responsible for establishing final policy with respect to the subject matter in
19 question.' " *Oviatt*, 954 F.2d at 1477 (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483-
20 84 (1986) (plurality opinion)).

21 Plaintiff fails to state any allegations to show that Officer Ardon was acting in compliance
22 with any policies of the City of Shafter Department of Corrections when she removed the
23 wheelchair from Plaintiff's cell. Thus, Plaintiff fails to state a cognizable claim against the City of
24 Shafter Department of Corrections.

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27 ² The Court notes that California law provides a cause of action for a wrongful taking of personal property, which
28 prohibits Plaintiff's claim under section 1983. Nothing in this order should be construed to relieve Plaintiff of the
procedural and substantive requirements for bringing an action under California law.

1 **4. California Department of Corrections**

2 Though not specifically named as a defendant, Plaintiff appears to believe the California
3 Department of Corrections is liable for Officer Ardon’s conduct. However, the Eleventh
4 Amendment prohibits federal courts from hearing suits brought against an un-consenting state.
5 *Brooks v. Sulphur Springs Valley Elec. Co.*, 951 F.2d 1050, 1053 (9th Cir. 1991); *see also*
6 *Seminole Tribe of Fla. v. Florida*, 116 S.Ct. 1114, 1122 (1996); *Puerto Rico Aqueduct Sewer*
7 *Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993); *Austin v. State Indus. Ins. Sys.*, 939 F.2d
8 676, 677 (9th Cir. 1991). “Though its language might suggest otherwise, the Eleventh
9 Amendment has long been construed to extend to suits brought against a state by its own citizens,
10 as well as by citizens of other states.” *Brooks*, 951 F.2d at 1053 (citations omitted). “The
11 Eleventh Amendment’s jurisdictional bar covers suits naming state agencies and departments as
12 defendants, and applies whether the relief is legal or equitable in nature.” *Id.* (citation omitted).
13 Because the California Department of Corrections is a state agency, it is entitled to dismissal
14 based on Eleventh Amendment immunity.

15 **CONCLUSION**

16 Plaintiff may either file a first amended complaint, or proceed on the claim found
17 cognizable against Officer Ardon for deliberate indifference to her serious medical needs in
18 violation of the Eighth Amendment. Plaintiff must either notify the Court of her decision to
19 proceed on this cognizable claim, or file a first amended complaint within **twenty-one (21) days**
20 of the service of this order. If Plaintiff needs an extension of time to comply with this order,
21 Plaintiff shall file a motion seeking an extension of time no later than **twenty-one (21) days** from
22 the date of service of this order.

23 If Plaintiff chooses to file a first amended complaint, she must demonstrate how the
24 conditions complained of have resulted in a deprivation of Plaintiff’s constitutional rights. *See*
25 *Ellis v. Cassidy*, 625 F.2d 227 (9th Cir. 1980). The first amended complaint must allege in
26 specific terms how each named defendant is involved. There can be no liability under section
27 1983 unless there is some affirmative link or connection between a defendant’s actions and the
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1 claimed deprivation. *Rizzo v. Goode*, 423 U.S. 362 (1976); *May v. Enomoto*, 633 F.2d 164, 167
2 (9th Cir. 1980); *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

3 A first amended complaint should be brief. Fed. R. Civ. P. 8(a). Such a short and plain
4 statement must "give the defendant fair notice of what the . . . claim is and the grounds upon
5 which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) quoting *Conley v.*
6 *Gibson*, 355 U.S. 41, 47 (1957). Although accepted as true, the "[f]actual allegations must be
7 [sufficient] to raise a right to relief above the speculative level" *Twombly*, 550 U.S. 127, 555
8 (2007) (citations omitted).

9 Plaintiff is further advised that an amended complaint supercedes the original, *Lacey v.*
10 *Maricopa County*, Nos. 09-15806, 09-15703, 2012 WL 3711591, at *1 n.1 (9th Cir. Aug. 29,
11 2012) (en banc), and must be "complete in itself without reference to the prior or superceded
12 pleading," Local Rule 220.

13 The Court provides Plaintiff with opportunity to amend to cure the deficiencies identified
14 by the Court in this order. *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff
15 may not change the nature of this suit by adding new, unrelated claims in a first amended
16 complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints).

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

- 18 1. Plaintiff's Complaint is dismissed, with leave to amend;
- 19 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 20 3. Within **twenty-one (21) days** from the date of service of this order, Plaintiff must
21 either:
 - 22 a. file a first amended complaint curing the deficiencies identified by the
23 Court in this order, or
 - 24 b. notify the Court in writing that she does not wish to file a first amended
25 complaint and wishes to proceed only on the claim identified by the Court
26 as viable/cognizable in this order; and

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4. If Plaintiff fails to comply with this order, it will be recommended that this action proceed only on the claim found cognizable herein and that all other claims and Defendants be dismissed with prejudice.

IT IS SO ORDERED.

Dated: January 27, 2017

/s/ Sheila K. Overta
UNITED STATES MAGISTRATE JUDGE