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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JODY MOREHOUSE,  
  
                    Plaintiff,  
  
                    v.  
  
KERN COUNTY SHERIFF’S OFFICE,  
et. al.,  
  
                    Defendants.

**CASE NO. 1:16-cv-00986-MJS (PC)**  
  
**ORDER DISMISSING CASE FOR FAILURE  
TO STATE A CLAIM**  
  
**(ECF No. 10)**  
  
**CLERK TO CLOSE CASE**

Plaintiff is a pretrial detainee proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff has consented to Magistrate Judge jurisdiction. (ECF No. 4.) No other parties have appeared in the action.

Plaintiff filed this action on July 11, 2016. (ECF No. 1.) On January 3, 2017, the Court dismissed Plaintiff’s first amended complaint (“FAC”) for failure to state a claim, but granted leave to amend. (ECF No. 9.) Plaintiff’s January 18, 2017 second amended complaint (“SAC”) is before the Court for screening. (ECF No. 10.)

1 **I. Screening Requirement**

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

11 **II. Pleading Standard**

12 A complaint must contain “a short and plain statement of the claim showing that  
13 the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations  
14 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported  
15 by mere conclusory statements, do not suffice,” Ashcroft v. Iqbal, 556 U.S. 662, 678  
16 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)), and courts “are  
17 not required to indulge unwarranted inferences,” Doe I v. Wal-Mart Stores, Inc., 572 F.3d  
18 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). While factual  
19 allegations are accepted as true, legal conclusions are not. Iqbal, 556 U.S. at 678.

20 Under section 1983, Plaintiff must demonstrate that each defendant personally  
21 participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.  
22 2002). This requires the presentation of factual allegations sufficient to state a plausible  
23 claim for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962,  
24 969 (9th Cir. 2009). Prisoners proceeding pro se in civil rights actions are entitled to  
25 have their pleadings liberally construed and to have any doubt resolved in their favor,  
26 Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted), but nevertheless,  
27 the mere possibility of misconduct falls short of meeting the plausibility standard, Iqbal,  
28 556 U.S. at 678; Moss, 572 F.3d at 969.

1 **III. Plaintiff's Allegations**

2 Plaintiff's claims stem from his incarceration in the Kern County Jail in Bakersfield,  
3 California. He brings this action against Nurse Judy (last name unknown) and Does 1-3,  
4 all nurses with the KCSO.<sup>1</sup>

5 Plaintiff's SAC makes the following allegations:

6 Plaintiff was not given medication from April 26, 2016 until sometime after June  
7 27, 2016. On September 8, Plaintiff's medications were cut off. Plaintiff filed a grievance  
8 and was told by F. Gonzalez (not a defendant) that according to CMH records, Plaintiff's  
9 medications were not cut off, but rather increased. Plaintiff maintains that medical log  
10 books would show the dates that Plaintiff did not receive his medications and that his  
11 medications were never increased.

12 Plaintiff asked Nurse Does 1-3 about his medication and was told by all that  
13 apparently his medications had not have been reordered in time, but they would check.  
14 Plaintiff states that without his medication, he and others are placed in danger. Plaintiff  
15 also suffers from severe mental anguish, anxiety, and depression. He asks that his  
16 medications be provided to him on a regular basis, and that he be given monetary  
17 compensation for his pain and suffering.

18 **IV. Analysis**

19 Plaintiff's SAC alleges he was denied medication. Plaintiff does not identify the  
20 medication withheld (although his first complaint referred to psychiatric medications for  
21 bipolar and anxiety disorders). (ECF No. 1 at 3.)

22 Plaintiff was advised that an amended complaint superseded any prior complaint  
23 in its entirety. Lacey v. Maricopa County, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc);  
24 Local Rule 220. Despite this, he failed to identify the type of medication he was denied in  
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26 <sup>1</sup> The caption of Plaintiff's SAC also names the Kern County Sheriff's Office ("KCSO") and "Mental Health"  
27 as Defendants. Plaintiff was previously advised that claims against county entities were not cognizable  
28 absent a showing that a policy or practice of the county led to Plaintiff's injuries. (ECF No. 9 at 4.) As  
Plaintiff had already been advised of the deficiencies in his pleadings against the KCSO and Mental Health  
(ECF No. 7 at 3-4) the Court denied Plaintiff leave to renew these claims in his SAC. (ECF No. 9 at 4.)  
Plaintiff does not attempt to state any claims against the KCSO or Mental Health in his SAC.

1 his SAC.

2 Plaintiff was also advised that he needed to “set forth specific facts as to each  
3 individual defendant’s” deprivation of his rights, and not merely attribute liability to a  
4 group of defendants. Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988). Despite this,  
5 Plaintiff fails to specify what each defendant personally said or did what to violate his  
6 rights. For the reasons stated below, Plaintiff’s SAC will be dismissed for failure to state a  
7 claim. Further leave to amend would be futile, and will be denied.

8 **A. Cruel and Unusual Punishment**

9 Plaintiff alleges Defendants violated his rights under the Eighth and Fourteenth  
10 Amendments when they failed to give Plaintiff his medications. As Plaintiff is a pretrial  
11 detainee, however, the Eighth Amendment does not apply.<sup>2</sup>

12 The standard applicable to a pretrial detainee’s claim for inadequate medical care  
13 under the Fourteenth Amendment is presently not clear. In the past, such claims were  
14 subject to the same state of mind requirement as an Eighth Amendment violation, i.e.,  
15 subjective and deliberate indifference to a substantial risk of serious harm. See Clouthier  
16 v. County of Contra Costa, 591 F.3d 1232 (9th Cir. 2010). However, that holding was  
17 called into question by the United States Supreme Court in a Fourteenth Amendment  
18 excessive force case, Kingsley v. Hendrickson, 135 S. Ct. 2466, 2473 (2015). Most  
19 recently, the Ninth Circuit extended the Kingsley rationale to a Fourteenth Amendment  
20 failure-to-protect claim. Castro v. Cty. of Los Angeles, No. 12-56829, 2016 WL 4268955,  
21 at \*7 (9th Cir. Aug. 15, 2016) (en banc) (slip op). Although Castro did not expressly  
22 extend its holding to other Fourteenth Amendment violations, the Court sees no reason  
23 why the same rationale should not apply to other Fourteenth Amendment conditions of  
24 confinement claims.

25 Accordingly, in order to proceed on such a claim, Plaintiff must allege “(1) the  
26 defendant made an intentional decision with respect to the conditions under which the  
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28 <sup>2</sup> The Court presumed Plaintiff is a pretrial detainee based on his place of incarceration. Plaintiff was instructed to inform the Court if this was a mistaken conclusion; he has given no such notice.

1 plaintiff was confined; (2) those conditions put the plaintiff at substantial risk of suffering  
2 serious harm; (3) the defendant did not take reasonable available measures to abate that  
3 risk, even though a reasonable officer in the circumstances would have appreciated the  
4 high degree of risk involved—making the consequences of the defendant's conduct  
5 obvious; and (4) by not taking such measures, the defendant caused the plaintiff's  
6 injuries.” Id. With respect to the third element, the defendant’s conduct must be  
7 “objectively unreasonable.” Id. (citing Kingsley, 135 S. Ct. at 2473).

8 Here, Plaintiff states he did not receive his medications between April 26 and June  
9 27, 2016, and again after September 8. When Plaintiff filed a grievance he was told that  
10 his medication had actually been increased after September 8. Does 1-3 informed him  
11 that his medication must not have been ordered in time, but that they would look into it.

12 These facts fall woefully short of stating a constitutional claim. Plaintiff has not  
13 alleged how any individual, Defendant or otherwise, made an intentional decision to cut  
14 off his medications or refuse to administer them. Plaintiff does not explain how failing to  
15 provide his medications placed him at risk of serious harm. He does not allege that any  
16 individual, Defendant or otherwise, knew of Plaintiff’s potential risk, and failed to take  
17 steps to abate it. Plaintiff was twice advised of these deficiencies and twice given the  
18 opportunity to correct them. His failure to so correct them affords a reasonable basis for  
19 concluding he cannot. Thus, further leave to amend would be futile.

20 **V. Conclusion**

21 Plaintiff’s complaint fails to state a claim. Further leave to amend is denied.

22 Accordingly, it is HEREBY ORDERED that:

- 23 1. Plaintiff’s SAC (ECF No. 10) is DISMISSED for failure to state a claim;
- 24 2. The Clerk of Court shall CLOSE this case and terminate all pending  
25 motions; and

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3. Dismissal counts as a strike under the “three strikes” provision set forth in 28 U.S.C. § 1915(g).

IT IS SO ORDERED.

Dated: February 27, 2017

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE