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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GERALD WRIGHT,
Plaintiff,
vs.
D. DAVEY, et al.,
Defendants.

1:16-cv-01881-GSA-PC

SCREENING ORDER
ORDER DISMISSING COMPLAINT FOR FAILURE TO STATE A CLAIM, WITH LEAVE TO AMEND (ECF No. 1.)
THIRTY-DAY DEADLINE FOR PLAINTIFF TO FILE AMENDED COMPLAINT
ORDER FOR CLERK TO SEND PLAINTIFF A CIVIL COMPLAINT FORM

I. BACKGROUND

Gerald Wright (“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 December 9, 2016, Plaintiff filed the Complaint commencing this action at the United States District Court for the Central District of California. (ECF No. 1.) On December 15, 2016, Plaintiff’s case was transferred to this court.

On December 30, 2016, 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

1 No. 8.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of
2 California, the undersigned shall conduct any and all proceedings in the case until such time as
3 reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

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

5 **II. SCREENING REQUIREMENT**

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

14 A complaint is required to contain "a short and plain statement of the claim showing
15 that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
16 not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
17 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
18 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff's allegations are
19 taken as true, courts "are not required to indulge unwarranted inferences." Doe I v. Wal-Mart
20 Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).
21 To state a viable claim, Plaintiff must set forth "sufficient factual matter, accepted as true, to
22 'state a claim to relief that is plausible on its face.'" Iqbal, 556 U.S. at 678-79; Moss v. U.S.
23 Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). While factual allegations are accepted as
24 true, legal conclusions are not. Id. The mere possibility of misconduct falls short of meeting
25 this plausibility standard. Id.

26 **III. SUMMARY OF COMPLAINT**

27 Plaintiff is presently incarcerated at Corcoran State Prison (CSP) in Corcoran,
28 California, in the custody of the California Department of Corrections and Rehabilitation,

1 where the events at issue in the Complaint allegedly occurred. Plaintiff names as defendants,
2 D. Davey and four Doe Defendants.

3 Plaintiff's allegations follow. Plaintiff has severe pain in both shoulders and cannot
4 move them. He requested an MRI exam, which was denied. Plaintiff contends that he should
5 be given an MRI exam and alleges that x-rays are not sufficient to show the damage to his
6 shoulders. Plaintiff alleges that the doctors at CSP failed to treat his condition. Plaintiff
7 requests monetary damages and an MRI exam.

8 **IV. PLAINTIFF'S MEDICAL CLAIM**

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

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

14 42 U.S.C. § 1983.

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

23 To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under
24 color of state law and (2) the defendant deprived him or her of rights secured by the
25 Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.
26 2006); see also Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing
27 “under color of state law”). A person deprives another of a constitutional right, “within the
28 meaning of § 1983, ‘if he does an affirmative act, participates in another’s affirmative act, or

1 omits to perform an act which he is legally required to do that causes the deprivation of which
2 complaint is made.” Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th
3 Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite
4 causal connection may be established when an official sets in motion a ‘series of acts by others
5 which the actor knows or reasonably should know would cause others to inflict’ constitutional
6 harms.” Preschooler II, 479 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of
7 causation “closely resembles the standard ‘foreseeability’ formulation of proximate cause.”
8 Arnold v. Int’l Bus. Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City
9 of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008).

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

27 “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051,
28 1060 (9th Cir. 2004). “Under this standard, the prison official must not only ‘be aware of the

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

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

16 Plaintiff has demonstrated that he had serious medical needs because he suffers severe
17 pain in his shoulders. However, Plaintiff has not shown that any of the Defendants acted with
18 deliberate indifference to his needs. In fact, Plaintiff has not alleged any facts showing
19 personal participation by any of the Defendants in the deprivation of his rights. It is not
20 sufficient to lump all of the Defendants together and claim that they all failed to provide him
21 with adequate treatment. To state a medical claim, Plaintiff must allege facts for each named
22 Defendant from which the court can infer that individually each was aware of a substantial risk
23 of serious harm to Plaintiff’s health and consciously and unreasonably disregarded the risk,
24 causing Plaintiff harm. Plaintiff should name each defendant and explain what happened --
25 what Plaintiff saw, heard or otherwise personally knew (and how he knew it), telling how each
26 defendant personally acted in depriving Plaintiff’s rights.

27 Moreover, Plaintiff has not shown that the course of treatment the doctors chose was
28 medically unacceptable under the circumstances and that they chose this course in conscious

1 disregard of an excessive risk to Plaintiff’s health. At most, Plaintiff alleges a difference of
2 opinion between Plaintiff and prison medical authorities regarding treatment, which does not
3 give rise to a § 1983 claim.

4 Therefore, Plaintiff fails to state a cognizable Eighth Amendment medical claim against
5 any of the Defendants. Plaintiff shall be granted leave to file an amended complaint addressing
6 the deficiencies discussed above.

7 **V. DOE DEFENDANTS**

8 Plaintiff names Doe defendants in this action. Unidentified, or “John Doe” defendants
9 must be named or otherwise identified before service can go forward. “As a general rule, the
10 use of ‘John Doe’ to identify a defendant is not favored.” Gillespie v. Civiletti, 629 F.2d 637,
11 642 (9th Cir. 1980). Plaintiff is advised that John Doe or Jane Doe defendants cannot be served
12 by the United States Marshal until Plaintiff has identified them as actual individuals and
13 amended his complaint to substitute names for John Doe or Jane Doe. For service to be
14 successful, the Marshal must be able to identify and locate defendants.

15 **VI. CONCLUSION AND ORDER**

16 The court finds that Plaintiff’s Complaint fails to state any claim upon which relief may
17 be granted under § 1983. The court will dismiss the Complaint for failure to state a claim and
18 give Plaintiff leave to file an amended complaint addressing the issues described above.

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

24 The First Amended Complaint must allege facts showing what each named defendant
25 did that led to the deprivation of Plaintiff’s constitutional rights. Fed. R. Civ. P. 8(a); Iqbal,
26 556 U.S. at 678; Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff must
27 demonstrate that each defendant *personally* participated in the deprivation of his rights by his
28 or her actions. Id. at 676-77 (emphasis added).

1 Plaintiff should note that although he has been given the opportunity to amend, it is not
2 for the purpose of changing the nature of this suit or adding unrelated claims. George v. Smith,
3 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints). Plaintiff is not granted leave to
4 add allegations of events occurring after the date he filed the Complaint, December 9, 2016.

5 Plaintiff is advised that an amended complaint supercedes the original complaint, Lacey
6 v. Maricopa County, 693 F 3d. 896, 907 n.1 (9th Cir. 2012), and it must be complete in itself
7 without reference to the prior or superceded pleading, Local Rule 220. Therefore, in an
8 amended complaint, as in an original complaint, each claim and the involvement of each
9 defendant must be sufficiently alleged. The amended complaint should be clearly and boldly
10 titled “First Amended Complaint,” refer to the appropriate case number, and be an original
11 signed under penalty of perjury.

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

- 13 1. Plaintiff’s Complaint is dismissed for failure to state a claim, with leave to
14 amend;
- 15 2. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 16 3. Plaintiff is granted leave to file a First Amended Complaint curing the
17 deficiencies identified by the court in this order, within **thirty (30) days** from
18 the date of service of this order;
- 19 4. Plaintiff shall caption the amended complaint “First Amended Complaint” and
20 refer to the case number 1:16-cv-01881-GSA-PC; and
- 21 5. If Plaintiff fails to file a First Amended Complaint within thirty days, this case
22 shall be dismissed for failure to state a claim.

23 IT IS SO ORDERED.
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25 Dated: August 31, 2017

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