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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID IBARRA,
Plaintiff,
v.
L.D. ZAMORA, et al.,
Defendants.

CASE NO. 1:17-cv-00144-MJS (PC)
ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND
(ECF No. 1)
THIRTY (30) DAY DEADLINE

Plaintiff David Ibarra, a state prisoner¹ proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on February 2, 2017. Plaintiff has consented to Magistrate Judge jurisdiction in this case. (ECF No. 6). No other parties have appeared.

¹ Plaintiff filed this action while incarcerated at Calipatria State Prison. (See ECF No. 1.) On March 20, 2017, Plaintiff filed a change of address to what appears to be a private residence. (ECF No. 7.) On March 30, 2017, the "Order Re: Consent or Reassignment," sent to Plaintiff at Calipatria State Prison, was returned to the Court as undeliverable. However, the State of California Inmate Locator system reflects that as of April 14, 2017, Plaintiff remained incarcerated at Calipatria (see <http://inmatelocator.cdcr.ca.gov>). Until notified otherwise, the Court proceeds on the assumption that Plaintiff remains incarcerated. Plaintiff should clarify his status in his amended complaint.

1 **I. Screening Requirement**

2 The Court is required to screen complaints brought by prisoners seeking relief
3 against a governmental entity or an officer or employee of a governmental entity. 28
4 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner
5 has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon
6 which relief may be granted, or that seek monetary relief from a defendant who is
7 immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee,
8 or any portion thereof, that may have been paid, the court shall dismiss the case at any
9 time if the court determines that . . . the action or appeal . . . fails to state a claim upon
10 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 complains of acts that occurred at Kern Valley State Prison ("KVSP") in
3 Delano, California, and the California Correctional Institution ("CCI") in Tehachapi,
4 California. Plaintiff brings this action against several Defendants: L.D. Zamora, Chief of
5 Healthcare for the California Department of Corrections; T. Brewer, Chief Executive
6 Officer at KVSP; L. Bluford, health care appeals coordinator at KVSP; Shittu, a doctor at
7 KVSP; D. Longcrier, Chief Support Executive at CCI; Tate, doctor at CCI; and Ross,
8 doctor at CCI. Plaintiff alleges that Defendants denied him adequate medical care.

9 Plaintiff's allegations may be summarized as follows:

10 From as early as March 2010, Plaintiff has suffered from severe and excruciating
11 pain in the left side of his neck, torso, and shoulder. He continually complained to
12 Defendants, who reacted with deliberate indifference. They refused him pain medication,
13 proper diagnosis, and treatment. In February 2015, after Plaintiff was transferred to a
14 different institution, doctors there properly diagnosed Plaintiff with a torn left rotator cuff,
15 muscle retraction and severe muscle atrophy which needed reverse shoulder
16 arthroplasty. According to these physicians, the extended period of time without
17 treatment meant that a total shoulder replacement was necessary.

18 Plaintiff seeks monetary damages and declaratory judgment.

19 **IV. Discussion**

20 **A. Linkage**

21 Under § 1983, in order to state a claim against an official in his personal capacity,
22 a plaintiff must demonstrate that each named defendant *personally* participated in the
23 deprivation of his rights. Ashcroft v. Iqbal, 556 U.S. 662, 676-77 (2009); Simmons, 609
24 F.3d 1011, 1020-21(9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th
25 Cir. 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff may not attribute
26 liability to a group of defendants, but must "set forth specific facts as to each individual
27 defendant's" deprivation of his rights. Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988);
28 see also Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Liability may not be

1 imposed on supervisory personnel under the theory of *respondeat superior*, as each
2 defendant is only liable for his or her own misconduct. Iqbal, 556 U.S. at 676-77; Ewing,
3 588 F.3d at 1235. Supervisors may only be held liable if they “participated in or directed
4 the violations, or knew of the violations and failed to act to prevent them.” Lemire v. Cal.
5 Dept. of Corrections & Rehabilitation, 726 F.3d 1062, 1074-75 (9th Cir. 2013) (“A prison
6 official in a supervisory position may be held liable under § 1983 . . . ‘if he or she was
7 personally involved in the constitutional deprivation or a sufficient causal connection
8 exists between the supervisor’s unlawful conduct and the constitutional violation.”)
9 (quoting Lolli v. Cty. of Orange, 351 F.3d 410, 418 (9th Cir. 2003)); Starr v. Baca, 652
10 F.3d 1202, 1205-08 (9th Cir. 2011); Corales v. Bennett, 567 F.3d 554, 570 (9th Cir.
11 2009); Preschooler II v. Clark Cty. Sch. Bd. of Trs., 479 F.3d 1175, 1182 (9th Cir. 2007);
12 Harris v. Roderick, 126 F.3d 1189, 1204 (9th Cir. 1997). Where a plaintiff alleges a
13 defendant failed to intervene to stop the abuses of subordinate staff, he must allege that
14 the supervisor defendant failed to intervene after being placed on notice of ongoing
15 constitutional violations by subordinate staff. Starr, 652 F.3d at 1205-08.

16 Here, Plaintiff fails to link any named Defendant to a particular act or omission,
17 instead referring to them collectively as “Defendants.” Such a pleading is insufficient to
18 put each Defendant on notice of the basis for Plaintiff’s claims. Therefore, all Defendants
19 will be dismissed with leave to amend.

20 **B. Eighth Amendment Medical Indifference**

21 **1. Legal Standard**

22 For Eighth Amendment claims arising out of medical care in prison, Plaintiff “must
23 show (1) a serious medical need by demonstrating that failure to treat [his] condition
24 could result in further significant injury or the unnecessary and wanton infliction of pain,”
25 and (2) that “the defendant’s response to the need was deliberately indifferent.” Wilhelm
26 v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012) (citing Jett v. Penner, 439 F.3d 1091,
27 1096 (9th Cir. 2006)). Deliberate indifference is shown by “(a) a purposeful act or failure
28 to respond to a prisoner’s pain or possible medical need, and (b) harm caused by the

1 indifference.” Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d at 1096). The requisite
2 state of mind is one of subjective recklessness, which entails more than ordinary lack of
3 due care. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012), *overruled in part on*
4 *other grounds*, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir. 2014) (citation and
5 quotation marks omitted); Wilhelm, 680 F.3d at 1122.

6 The second element of an Eighth Amendment claim is subjective deliberate
7 indifference, which involves two parts. Lemire, 726 F.3d at 1078. Plaintiff must
8 demonstrate first that the risk to his health from Defendants’ acts or omissions was
9 obvious or that Defendants were aware of the substantial risk to his health, and second
10 that there was no reasonable justification for exposing him to that risk. Id. (citing Thomas
11 v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010)) (quotation marks omitted). There must
12 be some causal connection between the actions or omissions of each named defendant
13 and the violation at issue; liability may not be imposed under a theory of *respondeat*
14 *superior*. Iqbal, 556 U.S. at 676-77; Lemire, 726 F.3d at 1074-75; Lacey v. Maricopa
15 County, 693 F.3d 896, 915-16 (9th Cir. 2012) (en banc); Starr v. Baca, 652 F.3d 1202,
16 1205-08 (9th Cir. 2011).

17 2. Analysis

18 Here, Plaintiff alleges he has suffered from severe neck, side, and shoulder pain
19 since March 2010. Despite his complaints, he was refused pain medication, a medical
20 diagnosis, or treatment until February 2015, when he was diagnosed with a torn rotator
21 cuff that requires a total shoulder replacement.

22 A torn rotator cuff that causes chronic pain constitutes a serious medical need.
23 Colwell v. Bannister, 763 F.3d 1060, 1066 (9th Cir. 2014) (existence of chronic or
24 substantial pain indicates a serious medical need) (citation omitted). Ignoring or refusing
25 to investigate and treat such a condition can constitute deliberate indifference. Thus,
26 Plaintiff may indeed be able to plead the elements of a cognizable Eighth Amendment
27 claim. However, he has not included sufficient facts to enable the Court to determine
28 which Defendant or Defendants saw him when, what his symptoms were at that time and

1 what response each Defendant gave. He needs to identify whom he sought medical
2 attention from, how he did so, when he did so, and what response he received from the
3 individual Defendants as to his complaints to them. Plaintiff will be given leave to amend
4 to supply such facts.

5 **V. Conclusion**

6 Plaintiff's complaint will be dismissed with leave to amend. The Court will provide
7 Plaintiff with the opportunity to file an amended complaint, if he believes, in good faith, he
8 can cure the identified deficiencies. Akhtar v. Mesa, 698 F.3d 1202, 1212-13 (9th Cir.
9 2012); Lopez, 203 F.3d at 1130-31; Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir.
10 1987). If Plaintiff amends, he may not change the nature of this suit by adding new,
11 unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir.
12 2007).

13 If Plaintiff files an amended complaint, it should be brief, Fed. R. Civ. P. 8(a), but
14 under section 1983, it must state what each named defendant did that led to the
15 deprivation of Plaintiff's constitutional rights and liability may not be imposed on
16 supervisory personnel under the theory of *respondeat superior*, Iqbal, 556 U.S. at 676-77;
17 Starr, 652 F.3d at 1205-07. Although accepted as true, the "[f]actual allegations must be
18 [sufficient] to raise a right to relief above the speculative level. . . ." Twombly, 550 U.S. at
19 555 (citations omitted).

20 Finally, an amended complaint supersedes the original complaint, Lacey v.
21 Maricopa County, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be
22 "complete in itself without reference to the prior or superseded pleading," Local Rule 220.

23 Accordingly, it is HEREBY ORDERED that:

- 24 1. Plaintiff's complaint (ECF No. 1) is DISMISSED with leave to amend;
- 25 3. The Clerk's Office shall send Plaintiff a blank complaint form along with a
26 copy of the complaint filed February 2, 2017;
- 27 4. Within **thirty (30) days** from the date of service of this order, Plaintiff must
28 either file an amended complaint curing the deficiencies identified by the

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Court in this order or a notice of voluntary dismissal;

5. If Plaintiff fails to comply with this order, this action will be dismissed, without prejudice, for failure to prosecute and failure to obey a court order.

IT IS SO ORDERED.

Dated: April 14, 2017

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE