

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JUAN MONTENEGRO,)	Case No.: 1:17-cv-00422-AWI-SAB (PC)
)	
Plaintiff,)	
)	ORDER DISMISSING COMPLAINT, WITH
v.)	LEAVE TO AMEND, FOR FAILURE TO STATE
)	A COGNIZABLE CLAIM FOR RELIEF
DR. SCHRFFENBERG, et.al.,)	
)	[ECF No. 1]
Defendants.)	
)	
)	

Plaintiff Juan Montenegro is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff declined United States Magistrate Judge jurisdiction on April 7, 2012, therefore, this action was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Currently before the Court is Plaintiff’s complaint, filed March 23, 2017.

**I.
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 or malicious,” that “fail[] to state a claim on which relief may be granted,” or that “seek[] monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

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

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

16 II.

17 COMPLAINT ALLEGATIONS

18 Doctor Schrrffenberg stopped Plaintiff’s medication for “tremendous and excruciating chronic
19 pain” in violation of the prescription against cruel and unusual punishment. Defendant nurse (John
20 Doe) provided the wrong medication causing severe side effects, including nausea, dizziness, and
21 suicidal ideations.

22 Plaintiff requests punitive and compensatory damages for his pain and suffering.

23 III.

24 DISCUSSION

25 A. Deliberate Indifference to Serious Medical Need

26 While the Eighth Amendment of the United States Constitution entitles Plaintiff to medical
27 care, the Eighth Amendment is violated only when a prison official acts with deliberate indifference to
28 an inmate’s serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012), overruled

1 in part on other grounds, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir. 2014); Wilhelm v.
2 Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006).
3 Plaintiff “must show (1) a serious medical need by demonstrating that failure to treat [his] condition
4 could result in further significant injury or the unnecessary and wanton infliction of pain,” and (2) that
5 “the defendant’s response to the need was deliberately indifferent.” Wilhelm, 680 F.3d at 1122 (citing
6 Jett, 439 F.3d at 1096). Deliberate indifference is shown by “(a) a purposeful act or failure to respond
7 to a prisoner’s pain or possible medical need, and (b) harm caused by the indifference.” Wilhelm, 680
8 F.3d at 1122 (citing Jett, 439 F.3d at 1096). The requisite state of mind is one of subjective
9 recklessness, which entails more than ordinary lack of due care. Snow, 681 F.3d at 985 (citation and
10 quotation marks omitted); Wilhelm, 680 F.3d at 1122.

11 “A difference of opinion between a physician and the prisoner - or between medical
12 professionals - concerning what medical care is appropriate does not amount to deliberate
13 indifference.” Snow v. McDaniel, 681 F.3d 978, 987 (9th Cir. 2012) (citing Sanchez v. Vild, 891 F.2d
14 240, 242 (9th Cir. 1989)), overruled in part on other grounds, Peralta v. Dillard, 744 F.3d 1076, 1082-
15 83 (9th Cir. 2014); Wilhelm v. Rotman, 680 F.3d 1113, 1122-23 (9th Cir. 2012) (citing Jackson v.
16 McIntosh, 90 F.3d 330, 332 (9th Cir. 1986)). Rather, Plaintiff “must show that the course of treatment
17 the doctors chose was medically unacceptable under the circumstances and that the defendants chose
18 this course in conscious disregard of an excessive risk to [his] health.” Snow, 681 F.3d at 988 (citing
19 Jackson, 90 F.3d at 332) (internal quotation marks omitted).

20 “Medical malpractice does not become a constitutional violation merely because the victim is a
21 prisoner.” Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285 (1977); Snow v. McDaniel, 681 F.3d at
22 987-88; Wilhelm v. Rotman, 680 F.3d at 1122. Isolated occurrences of neglect do not rise to the level
23 of an Eighth Amendment violation. O’Loughlin v. Doe, 920 F.2d 614, 617 (9th Cir. 1990) (quotation
24 marks omitted); Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990).

25 ///

26 ///

27 ///

28 ///

1 Plaintiff's allegations fail to give rise to a constitutional violation under the Eighth
2 Amendment. Plaintiff fails to set forth facts to demonstrate that either Defendant knew of and
3 disregarded an excessive risk to a *serious* medical need or that any medical care was purposeful and
4 more than mere negligence. Accordingly, Plaintiff fails to state a cognizable claim for relief and leave
5 to amend will be granted.

6 **IV.**

7 **CONCLUSION AND ORDER**

8 For the reasons stated, Plaintiff's complaint fails to state a claim upon which relief may be
9 granted. Plaintiff is granted leave to file an amended complaint within thirty (30) days. Noll v.
10 Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this suit by
11 adding new, unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir.
12 2007) (no "buckshot" complaints).

13 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each
14 named defendant did that led to the deprivation of Plaintiff's constitutional or other federal rights.
15 Iqbal, 556 U.S. 662, 678. "The inquiry into causation must be individualized and focus on the duties
16 and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a
17 constitutional deprivation." Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). Although accepted as
18 true, the "[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level .
19 . ." Twombly, 550 U.S. at 555 (citations omitted).

20 Finally, an amended complaint supersedes the original complaint, Forsyth v. Humana, Inc.,
21 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and must be
22 "complete in itself without reference to the prior or superseded pleading," Local Rule 220. "All
23 causes of action alleged in an original complaint which are not alleged in an amended complaint are
24 waived." King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir.
25 1981)); accord Forsyth, 114 F.3d at 1474.

26 Based on the foregoing, it is HEREBY ORDERED that:

- 27 1. The Clerk's Office shall send Plaintiff an amended civil rights complaint form;
28 2. Plaintiff's complaint, filed March 23, 2017, is dismissed for failure to state a claim;

