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

GERALDINE DARDEN,)	Case No.: 1:17-cv-00505-LJO-SAB (PC)
Plaintiff,)	
v.)	FINDINGS AND RECOMMENDATIONS RECOMMENDING DISMISSAL OF FIRST AMENDED COMPLAINT FOR FAILURE TO STATE A COGNIZABLE CLAIM FOR RELIEF
PHILIPPE MECHAEL, et al.,)	
Defendants.)	[ECF No. 6]
)	

Plaintiff Geraldine Darden is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff’s first amended complaint, filed June 28, 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). A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare

1 recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”
2 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555
3 (2007)). Moreover, Plaintiff must demonstrate that each defendant personally participated in the
4 deprivation of Plaintiff’s rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).
5 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings liberally
6 construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d 1113, 1121
7 (9th Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be facially plausible,
8 which requires sufficient factual detail to allow the Court to reasonably infer that each named
9 defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service,
10 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant has acted unlawfully” is not
11 sufficient, and “facts that are ‘merely consistent with’ a defendant’s liability” falls short of satisfying
12 the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

13 II.

14 COMPLAINT ALLEGATIONS

15 Plaintiff names Philippe Mechael, Ikwinder Singh, Robert Mitchell, and H. Longia, as
16 Defendants.

17 Philippe Mechael was assigned as Plaintiff’s primary care physician. At their initial medical
18 visit, Plaintiff explained to Dr. Mechael that she experiences a high level of pain, burning hands, legs,
19 feet, and mouth as being the most problematic symptoms as a result of multiple sclerosis. Plaintiff
20 explained that he had been taking Gabapentin for appropriately six years and it minimized the
21 symptoms she experienced and provided a better quality of life.

22 On June 3, 2016, July 31, 2016, August 1, 2016, and October 2 through 6, 2016, Plaintiff was
23 not able to obtain her prescribed medication.

24 Plaintiff informed Dr. Ikwinder Singh in writing that she suffers from multiple sclerosis and
25 was not getting the medication to treat her symptoms.

26 Robert Mitchell, Chief Medical Executive, had previously been Plaintiff’s primary care
27 physician and was fully aware of Plaintiff’s illness. Therefore, when Plaintiff was not provided
28 medication on the dates in question, Dr. Mitchell became a responsible participant.

1 At an interview on August 11, 2016, Plaintiff spoke with Dr. Longia and expressed her
2 concerns for the lapse in her medication on the dates in question.

3 III.

4 DISCUSSION

5 A. Deliberate Indifference to Serious Medical Need

6 While the Eighth Amendment of the United States Constitution entitles Plaintiff to medical
7 care, the Eighth Amendment is violated only when a prison official acts with deliberate indifference to
8 an inmate's serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012), overruled
9 in part on other grounds, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir. 2014); Wilhelm v.
10 Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006).
11 Plaintiff "must show (1) a serious medical need by demonstrating that failure to treat [his] condition
12 could result in further significant injury or the unnecessary and wanton infliction of pain," and (2) that
13 "the defendant's response to the need was deliberately indifferent." Wilhelm, 680 F.3d at 1122 (citing
14 Jett, 439 F.3d at 1096). Deliberate indifference is shown by "(a) a purposeful act or failure to respond
15 to a prisoner's pain or possible medical need, and (b) harm caused by the indifference." Wilhelm, 680
16 F.3d at 1122 (citing Jett, 439 F.3d at 1096). The requisite state of mind is one of subjective
17 recklessness, which entails more than ordinary lack of due care. Snow, 681 F.3d at 985 (citation and
18 quotation marks omitted); Wilhelm, 680 F.3d at 1122.

19 Isolated occurrences of neglect do not rise to the level of an Eighth Amendment violation.
20 O'Loughlin v. Doe, 920 F.2d 614, 617 (9th Cir. 1990) (quotation marks omitted); Wood v.
21 Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990). "A difference of opinion between a prisoner-
22 patient and prison medical authorities regarding treatment does not give rise to a [section] 1983
23 claim." Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981) (internal citation omitted); accord
24 Snow v. McDaniel, 681 F.3d 978, 987-88 (9th Cir. 2012); Wilhelm v. Rotman, 680 F.3d at 1122-23.
25 To prevail, plaintiff "must show that the course of treatment the doctors chose was medically
26 unacceptable under the circumstances . . . and . . . that they chose this course in conscious disregard of
27 an excessive risk to plaintiff's health." Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1986)
28 (internal citations omitted).

1 Plaintiff's claims of inadequate medical claim stem from the denial of Gabapentin on seven
2 separate occasions. Even assuming the validity of Plaintiff's allegations, such allegations fail to
3 establish that any of the Defendants acted with deliberate indifference to Plaintiff's serious medical
4 needs. Instead, at most, the facts as alleged demonstrate nothing more than isolated occurrences of
5 neglect that do not rise to the level of an Eighth Amendment violation. See O'Loughlin v. Doe, 920
6 F.2d 614, 617 (9th Cir. 1990) (repeatedly failing to satisfy requests for aspirins and antacids to
7 alleviate headache, nausea and pains is not constitutional violation; it may constitute grounds for
8 medical malpractice but does not rise to the level of unnecessary and wanton infliction of pain). In
9 addition, the fact that Plaintiff may not have agreed with certain prescriptions or the time frame for
10 such prescriptions is insufficient to give rise to a constitutional claim for deliberate indifference.
11 Accordingly, Plaintiff fails to state a cognizable claim for relief.

12 IV.

13 RECOMMENDATIONS

14 Plaintiff was previously notified of the applicable legal standards and the deficiencies in his
15 pleading, and despite guidance from the Court, Plaintiff's first amended complaint is largely identical
16 to the original complaint. Based upon the allegations in Plaintiff's original and first amended
17 complaint, the Court is persuaded that Plaintiff is unable to allege any additional facts that would
18 support a claim for a due process violation or access to the court, and further amendment would be
19 futile. See Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) ("A district court may not deny
20 leave to amend when amendment would be futile.") Based on the nature of the deficiencies at issue,
21 the Court finds that further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122, 1130
22 (9th Cir. 2000); Noll v. Carlson, 809 F.2d 1446-1449 (9th Cir. 1987).

23 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 24 1. The instant action be dismissed, without further leave to amend, for failure to state a
25 cognizable claim for relief; and
- 26 2. The Clerk of Court be directed to terminate this action.

27 These Findings and Recommendations will be submitted to the United States District Judge
28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty (30) days** after

1 being served with these Findings and Recommendations, Plaintiff may file written objections with the
2 Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
3 Recommendations.” Plaintiff is advised that failure to file objections within the specified time may
4 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
5 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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IT IS SO ORDERED.

Dated: July 28, 2017


UNITED STATES MAGISTRATE JUDGE