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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MANUEL HERRERA-GARCIA,
Plaintiff,
v.
A. LUCAS,
Defendant.

CASE NO. 1:17-cv-00635-DAD-MJS (PC)
**ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND**
(ECF No. 1)
THIRTY-DAY DEADLINE TO AMEND

Plaintiff proceeds pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff’s February 21, 2017 complaint is before the Court for screening. (ECF No. 1.)¹

I. Screening Requirement

The Court is required to screen complaints brought by inmates seeking relief against a governmental entity or an 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

¹ Plaintiff originally filed this action in the U.S. District Court for the Northern District of California. However, as the alleged violations occurred in Kern County, his case was properly transferred to this Court. (ECF Nos. 8 & 9.)

1 has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon
2 which relief may be granted, or that seek monetary relief from a defendant who is
3 immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee,
4 or any portion thereof, that may have been paid, the court shall dismiss the case at any
5 time if the court determines that . . . the action or appeal . . . fails to state a claim upon
6 which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

7 **II. Pleading Standard**

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

16 Prisoners may bring § 1983 claims against individuals acting “under color of state
17 law.” See 42 U.S.C. § 1983, 28 U.S.C. § 1915(e) (2)(B)(ii). Under § 1983, Plaintiff must
18 demonstrate that each defendant personally participated in the deprivation of his rights.
19 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). This requires the presentation of
20 factual allegations sufficient to state a plausible claim for relief. Iqbal, 556 U.S. at 678-79;
21 Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). Prisoners proceeding
22 pro se in civil rights actions are entitled to have their pleadings liberally construed and to
23 have any doubt resolved in their favor, Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010)
24 (citations omitted), but nevertheless, the mere possibility of misconduct falls short of
25 meeting the plausibility standard, Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

26 **III. Plaintiff’s Allegations**

27 Plaintiff is currently incarcerated at Kern Valley State Prison (“KVSP”), in Delano,
28 California, where his claims arose.

1 He brings this action against a single Defendant, A. Lucas, Appeals Coordinator at
2 KVSP. His allegations may be summarized essentially as follows:

3 Plaintiff is entitled to a “sterile environment” in prison. He has had to “put up” with
4 an infection that could easily have been cured, yet “they” denied Plaintiff services.
5 Plaintiff has had to live with a stubborn infection that is difficult to get rid of.

6 He seeks an order directing appropriate treatment for his infection.

7 **IV. Discussion**

8 **A. Linkage**

9 Plaintiff sues a single Defendant, an Appeals Coordinator. It is not at all clear how
10 an Appeals Coordinator is responsible for treating or otherwise responding to Plaintiff’s
11 infection.

12 Under § 1983, Plaintiff must demonstrate that each named defendant *personally*
13 participated in the deprivation of his rights. Ashcroft, 556 U.S. at 676-7; Simmons, 609
14 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th
15 Cir. 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff may not
16 attribute liability to a group of defendants, but must “set forth specific facts as to each
17 individual defendant’s” deprivation of his rights. Leer v. Murphy, 844 F.2d 628, 634 (9th
18 Cir. 1988); see also Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Liability may not
19 be imposed on supervisory personnel under the theory of *respondeat superior*, as each
20 defendant is only liable for his or her own misconduct. Iqbal, 556 U.S. at 676-77; Ewing,
21 588 F.3d at 1235. Supervisors may only be held liable if they “participated in or directed
22 the violations, or knew of the violations and failed to act to prevent them.” Lemire v. Cal.
23 Dept. of Corrections & Rehabilitation, 726 F.3d 1062, 1074-75 (9th Cir. 2013).

24 As it is not clear what wrong Defendant Lucas is accused of, the complaint will be
25 dismissed with leave to amend. In his amended complaint, Plaintiff should adhere to the
26 pleading standards set forth below.

1 **B. Conditions of Confinement**

2 Extreme deprivations are required to make out a conditions of confinement claim,
3 and only those deprivations denying the minimal civilized measure of life’s necessities
4 are sufficiently grave to form the basis of an Eighth Amendment violation. Hudson, 503
5 U.S. at 9 (citations and quotations omitted). To maintain an Eighth Amendment claim, a
6 prisoner must show that prison officials were deliberately indifferent to a substantial risk
7 of harm to his health or safety. See, e.g., Farmer v. Brennan, 511 U.S. 825, 847 (1994);
8 Thomas v. Ponder, 611 F.3d 1144, 1150-51 (9th Cir. 2010); Foster v. Runnels, 554 F.3d
9 807, 812-14 (9th Cir. 2009); Morgan, 465 F.3d at 1045; Frost v. Agnos, 152 F.3d 1124,
10 1128 (9th Cir. 1998). “Deliberate indifference describes a state of mind more
11 blameworthy than negligence” but is satisfied by something “less than acts or omissions
12 for the very purpose of causing harm or with knowledge that harm will result.” Farmer,
13 511 U.S. at 835. For Eighth Amendment claims arising out of medical care in prison,
14 Plaintiff “must show (1) a serious medical need by demonstrating that failure to treat [his]
15 condition could result in further significant injury or the unnecessary and wanton infliction
16 of pain,” and (2) that “the defendant’s response to the need was deliberately indifferent.”
17 Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012) (citing Jett v. Penner, 439 F.3d
18 1091, 1096 (9th Cir. 2006)).

19 Here, Plaintiff complains that he had an infection that went untreated. He does not
20 describe the nature of the infection, what caused it, or why it constitutes a serious
21 medical need, and he names no medical professionals or other prison officials who were
22 deliberately indifferent to the treatment of the infection. Plaintiff will be given leave to
23 amend.

24 **C. Processing of Appeals**

25 The only Defendant named is an Appeals Coordinator. Plaintiff may intend to
26 complain about the way in which his grievances regarding his medical care were
27 handled.

28 Because there is no right to any particular grievance process, it is impossible for

1 due process to have been violated by ignoring, failing to properly process, or ultimately
2 denying grievances. See Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003).
3 Prisoners do, however, retain a First Amendment right to petition the government through
4 the prison grievance process. See Bradley v. Hall, 64 F.3d 1276, 1279 (9th Cir. 1995).
5 Therefore, interference with the grievance process may, in certain circumstances,
6 implicate the First Amendment. Such a claim would be based on the theory that
7 interference with the grievance process resulted in a denial of the inmate's right to access
8 to the courts. This right includes petitioning the government through the prison grievance
9 process. See Lewis v. Casey, 518 U.S. 343, 346 (1996); Bounds v. Smith, 430 U.S. 817,
10 821 (1977); Bradley v. Hall, 64 F.3d 1276, 1279 (9th Cir. 1995) (discussing the right in
11 the context of prison grievance procedures). The right of access to the courts, however,
12 only requires that prisoners have the capability of bringing challenges to sentences or
13 conditions of confinement. See Lewis, 518 U.S. at 356–57. Therefore, the right of access
14 to the courts is only a right to present these kinds of claims to the court, and not a right to
15 discover claims or to litigate them effectively once filed. See id. at 354–55.

16 Additionally, the prisoner must allege an actual injury. See id. at 349. “Actual
17 injury” is prejudice with respect to contemplated or existing litigation, such as the inability
18 to meet a filing deadline or present a non-frivolous claim. See id.; see also Phillips v.
19 Hust, 477 F.3d 1070, 1075 (9th Cir. 2007). Delays in providing legal materials or
20 assistance which result in prejudice are “not of constitutional significance” if the delay is
21 reasonably related to legitimate penological purposes. Lewis, 518 U.S. at 362.

22 If Plaintiff believes he can state a claim for denial of access to the courts, he may
23 attempt to do so in his amended complaint.

24 **V. Conclusion**

25 Plaintiff’s complaint fails to state a cognizable claim. The Court will provide Plaintiff
26 the opportunity to file an amended complaint, if he believes, in good faith, he can cure the
27 identified deficiencies. Akhtar v. Mesa, 698 F.3d 1202, 1212-13 (9th Cir. 2012); Lopez v.
28 Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000); Noll v. Carlson, 809 F.2d 1446, 1448-49

1 (9th Cir. 1987). If Plaintiff amends, he may not change the nature of this suit by adding
2 new, unrelated claims. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). If Plaintiff
3 chooses not to amend, and instead wishes to voluntarily dismiss his case without
4 prejudice, he must so notify the Court.

5 The Court advises Plaintiff an amended complaint supersedes the original
6 complaint, Lacey v. Maricopa County, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc),
7 and it must be “complete in itself without reference to the prior or superseded pleading,”
8 Local Rule 220.

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

- 10 1. Plaintiff’s complaint (ECF No. 1) is DISMISSED with leave to amend;
- 11 2. The Clerk’s Office shall send Plaintiff a blank civil rights complaint form and
12 a copy of his complaint filed February 21, 2017;
- 13 3. Within **thirty (30) days** from the date of service of this order, Plaintiff must
14 file an amended complaint curing the deficiencies identified by the Court in
15 this order or a notice of voluntary dismissal; and
- 16 4. If Plaintiff fails to file an amended complaint or notice of voluntary dismissal,
17 this action may be dismissed, with prejudice, subject to the “three strikes”
18 provision set forth in 28 U.S.C. § 1915(g).

19
20 IT IS SO ORDERED.

21 Dated: September 26, 2017

/s/ Michael J. Seng
22 UNITED STATES MAGISTRATE JUDGE
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