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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ANTHONY WILEY, SR.,
Plaintiff,
v.
KERN COUNTY SHERIFF, et al.,
Defendants.

Case No. 1:17-cv-00981-BAM (PC)
**ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN DISTRICT JUDGE TO
ACTION**
**FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION, WITH PREJUDICE, FOR
FAILURE TO STATE A CLAIM, FAILURE
TO OBEY A COURT ORDER, AND
FAILURE TO PROSECUTE**
(ECF No. 17)
FOURTEEN (14) DAY DEADLINE

I. Background

Plaintiff Anthony Wiley, Sr. (“Plaintiff”) is a former jail inmate proceeding *pro se* and *in forma pauperis* in this civil rights action. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 20, 2018, the Court issued a screening order granting Plaintiff leave to file an amended complaint within thirty (30) days. (ECF No. 17.) The Court expressly warned Plaintiff that the failure to file an amended complaint in compliance with the Court’s order would result in a recommendation for dismissal of this action, with prejudice, for failure to obey a court order and for failure to state a claim. (Id. at 7.) Plaintiff’s first amended complaint was due on or

1 before March 26, 2018. Plaintiff has failed to file an amended complaint or otherwise
2 communicate with the Court.

3 **II. Failure to State a Claim**

4 **A. Screening Requirement**

5 The Court is required to screen complaints brought by prisoners seeking relief against a
6 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C.
7 § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous
8 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
9 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C.
10 § 1915(e)(2)(B)(ii).

11 A complaint must contain “a short and plain statement of the claim showing that the
12 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
13 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
14 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
15 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken as
16 true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc.,
17 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

18 To survive screening, Plaintiff’s claims must be facially plausible, which requires
19 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable
20 for the misconduct alleged. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss v. U.S.
21 Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted
22 unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the
23 plausibility standard. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss, 572 F.3d at 969.

24 **B. Plaintiff’s Allegations**

25 Plaintiff, a former pretrial detainee, filed the instant action while housed at the Kern
26 County Lerdo Pre-Trial Facility in Bakersfield, California, where the events in the complaint are
27 alleged to have occurred. Plaintiff names the following defendants: (1) Kern County Sheriff and
28 Sheriff’s Deputies; and (2) Medical Detention Staff—Doctor/Nurse.

1 Plaintiff allege as follows: On June 10, 2017, at 9:30 p.m., Plaintiff was booked into the
2 Kern County Central Jail. He was seen by a nurse and his medical history and current
3 medications were divulged. Notes were made and his blood pressure was taken. Plaintiff advised
4 the nurse that he was under a doctor's care for (1) high blood pressure, (2) degenerative neck and
5 spine disc, and (3) nerve pain associated with his back and lower extremities in need of
6 orthopedic shoes. Although Plaintiff's blood pressure was high, he was told that he could not be
7 given meds until seen by a doctor.

8 Plaintiff was transferred to the Lerdo Pre-Trial Facility. He put in seven sick call requests
9 to see a doctor. His blood pressure was taken four times between June 14, 2017 and July 1, 2017,
10 all of which read very high, but he did not receive any medication or doctor visit.

11 On July 3, 2017, Plaintiff's pain was so great that he fainted in his cell and was rushed to
12 Kern Medical Center. Plaintiff was treated for high blood pressure. He was asked why he had
13 not been treated for high blood pressure because they could not get it to come down. Plaintiff
14 advised that treatment was denied. Plaintiff alleges that he was injured by having high blood
15 pressure along with fluid and constant pressure on his brain. He has headaches every day and his
16 balance, vision and hearing is not the same.

17 Plaintiff further alleges that defendants failed to provide proper shoes for his medical
18 condition and he was denied the right to provide them for himself. Plaintiff asserts that one leg is
19 shorter than the other and without proper or normal footwear his spinal cord and disc are
20 constantly rubbing, cause nerve pain. When he was booked into Kern County Central Jail, he
21 advised medical staff of multiple surgeries and implants in his leg and that he required a soft-
22 fabric fitting shoe on the left foot and a raised shoe for the right foot. He was given Ibuprofen for
23 two days and it was ended. A shoe chrono was issued on July 10, 2017. Pain meds and shoes
24 were denied. Plaintiff additionally alleges that medical staff did not provide him medicine for
25 nerve pain until July 17, 2017.

26 As relief, Plaintiff seeks proper shoes, information regarding his medications, outside
27 medical treatment and punitive damages.

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1 **C. Discussion**

2 **1. Federal Rule of Civil Procedure 8**

3 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain “a short and plain
4 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a).
5 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause
6 of action, supported by mere conclusory statements, do not suffice.” Iqbal, 556 U.S. at 678
7 (citation omitted). Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a
8 claim to relief that is plausible on its face.’ ” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S.
9 at 555). While factual allegations are accepted as true, legal conclusions are not. Id.; see also
10 Twombly, 550 U.S. at 556–557; Moss, 572 F.3d at 969.

11 While Plaintiff’s complaint is short, it is not a plain statement of his claims. The
12 disjointed nature of the allegations make it difficult to determine what happened, when it
13 happened and who was involved.

14 **2. Linkage Requirement**

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

16 Every person who, under color of [state law] . . . subjects, or causes to be
17 subjected, any citizen of the United States . . . to the deprivation of any rights,
18 privileges, or immunities secured by the Constitution . . . shall be liable to the
19 party injured in an action at law, suit in equity, or other proper proceeding for
redress.

20 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between
21 the actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. See
22 Monell v. Dep’t of Soc. Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). The
23 Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a constitutional
24 right, within the meaning of section 1983, if he does an affirmative act, participates in another’s
25 affirmative acts, or omits to perform an act which he is legally required to do that causes the
26 deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

27 Plaintiff’s complaint fails to adequately identify or link any defendant to the allegations in
28 his complaint. Plaintiff may not generally refer to defendants, but must instead link individual

1 defendants to the asserted violation of his rights.

2 Further, to the extent Plaintiff seeks to hold the Kern County Sheriff liable based on the
3 Sheriff's role as supervisor, he may not do so. Liability may not be imposed on supervisory
4 personnel for the actions or omissions of their subordinates under the theory of *respondeat*
5 *superior*. Iqbal, 556 U.S. at 676– 77; Simmons v. Navajo Cty., Ariz., 609 F.3d 1011, 1020–21
6 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones v.
7 Williams, 297 F.3d 930, 934 (9th Cir. 2002). “A supervisor may be liable only if (1) he or she is
8 personally involved in the constitutional deprivation, or (2) there is a sufficient causal connection
9 between the supervisor’s wrongful conduct and the constitutional violation.” Crowley v.
10 Bannister, 734 F.3d 967, 977 (9th Cir. 2013). “Under the latter theory, supervisory liability exists
11 even without overt personal participation in the offensive act if supervisory officials implement a
12 policy so deficient that the policy itself is a repudiation of constitutional rights and is the moving
13 force of a constitutional violation.” Crowley, 734 F.3d at 977 (citing Hansen v. Black, 885 F.2d
14 642, 646 (9th Cir. 1989)) (internal quotation marks omitted).

15 3. Fourteenth Amendment – Inadequate Medical Care

16 The standard applicable to a pretrial detainee’s claim for inadequate medical care under
17 the Fourteenth Amendment is presently not clear. In the past, such claims were subject to the
18 same state of mind requirement as an Eighth Amendment violation, i.e., subjective and deliberate
19 indifference to a substantial risk of serious harm. See Clouthier v. Cty. of Contra Costa, 591 F.3d
20 1232 (9th Cir. 2010). However, that holding was called into question by the United States
21 Supreme Court in a Fourteenth Amendment excessive force case, Kingsley v. Hendrickson, 135
22 S. Ct. 2466, 2473 (2015). Most recently, the Ninth Circuit extended the Kingsley rationale to a
23 Fourteenth Amendment failure-to-protect claim. Castro v. Cty. of L.A., 833 F.3d 1060, 1070–71
24 (9th Cir. 2016) (en banc). In Guerra v. Sweeny, 2016 WL 5404407 (E.D. Cal 2016) (Ishii, J.), the
25 court extended Castro to an untreated medical needs case. The court determined that the elements
26 of such a claim are: (1) The plaintiff made a request for medical care or the need for care was
27 glaringly obvious; (2) The plaintiff had a serious medical need; (3) The defendant did not take
28 reasonable steps to obtain or provide medical care, even though a reasonable officer (or

1 reasonable medical staff) in the circumstances would have appreciated the high degree of risk
2 involved—making the likelihood of harm obvious; and (4) By not taking such measures, the
3 defendant caused the plaintiff's injuries. Id. at *3.

4 Regardless of the standard applied, Plaintiff fails to provide sufficient factual allegations
5 to support a claim for inadequate medical care. On the face of his complaint, Plaintiff plausibly
6 alleges that he was denied adequate treatment for his high blood pressure and nerve pain.
7 However, Plaintiff also appears to admit that he received pain medications for short period of
8 time, a shoe chrono, and a number of blood pressure checks. He also does not indicate from
9 whom he sought medical care or from whom he received inadequate treatment. As indicated
10 above, Plaintiff's complaint does not properly link his allegations to any named defendant(s).

11 **4. Failure to Protect**

12 Plaintiff seeks injunctive relief in the form of proper shoes, information regarding his
13 medications, outside medical treatment. However, Plaintiff is no longer housed at the Lerdo Pre-
14 Trial Facility. As a result, his claim for injunctive relief from defendants at the Lerdo Pre-Trial
15 Facility is now moot. See, e.g., Holt v. Stockman, 2012 WL 259938, *6 (E.D. Cal. Jan. 25, 2012)
16 (a prisoner's claim for injunctive relief is rendered moot when he is transferred from the
17 institution whose employees he seeks to enjoin); see also Andrews v. Cervantes, 493 F.3d 1047,
18 1053 n.5 (9th Cir. 2007).

19 **III. Failure to Prosecute and Failure to Obey a Court Order**

20 **A. Legal Standard**

21 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with
22 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .
23 within the inherent power of the Court.” District courts have the inherent power to control their
24 dockets and “[i]n the exercise of that power they may impose sanctions including, where
25 appropriate, . . . dismissal.” Thompson v. Hous. Auth., 782 F.2d 829, 831 (9th Cir. 1986). A
26 court may dismiss an action, with prejudice, based on a party's failure to prosecute an action,
27 failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46
28 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet,

1 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
2 amendment of complaint); Malone v. U.S. Postal Serv., 833 F.2d 128, 130–33 (9th Cir. 1987)
3 (dismissal for failure to comply with court order).

4 In determining whether to dismiss an action, the Court must consider several factors:
5 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
6 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
7 cases on their merits; and (5) the availability of less drastic sanctions. Henderson v. Duncan, 779
8 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988).

9 **B. Discussion**

10 Here, Plaintiff’s first amended complaint is overdue, and he has failed to comply with the
11 Court’s orders. The Court cannot effectively manage its docket if Plaintiff ceases litigating his
12 case. Thus, the Court finds that both the first and second factors weigh in favor of dismissal.

13 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
14 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
15 Anderson v. Air W., 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against
16 dismissal because public policy favors disposition on the merits. Pagtalunan v. Galaza, 291 F.3d
17 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose
18 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
19 progress in that direction,” which is the case here. In re Phenylpropanolamine (PPA) Products
20 Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

21 Finally, the Court’s warning to a party that failure to obey the court’s order will result in
22 dismissal satisfies the “considerations of the alternatives” requirement. Ferdik, 963 F.2d at 1262;
23 Malone, 833 at 132–33; Henderson, 779 F.2d at 1424. The Court’s February 20, 2018 screening
24 order expressly warned Plaintiff that his failure to file an amended complaint would result in a
25 recommendation of dismissal of this action, with prejudice, for failure to obey a court order and
26 for failure to state a claim. (ECF No. 17, p. 7.) Thus, Plaintiff had adequate warning that
27 dismissal could result from his noncompliance.

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1 Additionally, at this stage in the proceedings there is little available to the Court that
2 would constitute a satisfactory lesser sanction while protecting the Court from further
3 unnecessary expenditure of its scarce resources. Plaintiff is proceeding *in forma pauperis* in this
4 action, making monetary sanctions of little use, and the preclusion of evidence or witnesses is
5 likely to have no effect given that Plaintiff has ceased litigating his case.

6 **IV. Conclusion and Recommendation**

7 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a
8 district judge to this action.

9 Further, the Court finds that dismissal is the appropriate sanction and HEREBY
10 RECOMMENDS that this action be dismissed, with prejudice, for failure to state a claim
11 pursuant to 28 U.S.C. § 1915A, for failure to obey a Court order, and for Plaintiff's failure to
12 prosecute this action.

13 These Findings and Recommendation will be submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
15 **(14) days** after being served with these Findings and Recommendation, Plaintiff may file written
16 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
17 Findings and Recommendation." Plaintiff is advised that failure to file objections within the
18 specified time may result in the waiver of the "right to challenge the magistrate's factual
19 findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.
20 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21
22 IT IS SO ORDERED.

23 Dated: April 6, 2018

24 /s/ Barbara A. McAuliffe
25 UNITED STATES MAGISTRATE JUDGE
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