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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MORRIS ROBERSON,

Plaintiff,

v.

A. MANASRAH, et al.,

Defendants.

Case No. 1:17-cv-01062-SAB (PC)

ORDER DIRECTING PLAINTIFF TO FILE
AN AMENDED COMPLAINT OR NOTIFY
THE COURT OF INTENT TO PROCEED
ON CLAIM FOUND TO BE COGNIZABLE

(ECF No. 1)

THIRTY DAY DEADLINE

Plaintiff Morris Roberson, a state prisoner, 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 complaint, filed August 9, 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 recitals of the elements of a cause of action, supported by mere

1 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
2 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate
3 that each defendant personally participated in the deprivation of Plaintiff’s rights. Jones v.
4 Williams, 297 F.3d 930, 934 (9th Cir. 2002).

5 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
6 liberally construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d
7 1113, 1121 (9th Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be
8 facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer
9 that each named defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss
10 v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant
11 has acted unlawfully” is not sufficient, and “facts that are ‘merely consistent with’ a defendant’s
12 liability” falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572
13 F.3d at 969.

14 II.

15 COMPLAINT ALLEGATIONS

16 Plaintiff is in the custody of the California Department of Corrections and Rehabilitation
17 and is housed at Kern Valley State Prison (“KVSP”). Plaintiff brings this action against Nurse
18 Practitioner (“NP”) A. Manasrah, NP C. Ogbuehi, NP C. Relevante and Warden C. Pfeiffer
19 alleging deliberate indifference in violation of the Eight Amendment.

20 Plaintiff was seen by Defendant Manasrah on January 5, 2015, and was told that he was
21 only being seen for his chronic medical conditions and was refused evaluation for any other
22 medical conditions. (Compl. ¶ 10, ECF No. 1.) Plaintiff explained that he was supposed to see a
23 specialist on November 26, 2014, to see if his Hepatitis surface antibody 12b shots had worked.
24 (Compl. ¶ 11.) Plaintiff was concerned because he was not feeling well. (Compl. ¶ 11.)
25 Plaintiff explained that he had been experiencing excruciating sharp pains in his head, throat,
26 neck, and stomach for several days. (Compl. ¶ 12.) Defendant Manasrah responded, “oh, you’ll
27 live, you’re just getting older, and if the shots don’t work, you’ll know.” (Compl. ¶ 12.)
28 Plaintiff also explained that the dentist had told him he had thyroid disease and needed to see a

1 medical doctor to have “it taken out.” (Compl. ¶ 13.) Defendant Manasrah told Plaintiff to “shut
2 up” or an officer would escort him out in handcuffs. (Compl. ¶ 13.) Plaintiff left without
3 receiving treatment for any of his medical conditions. (Compl. ¶ 14.)

4 Plaintiff submitted several health care requests to be treated for his serious medical
5 conditions. (Compl. ¶ 14.) Each time Plaintiff went to the medical clinic, Defendant Manasrah
6 would deny Plaintiff treatment and would falsely note in the medical record that Plaintiff was in
7 no obvious distress and had a normal gait. (Compl. ¶ 15.)

8 From April through June of 2016, Plaintiff submitted four health care requests
9 complaining of shortness of breath, muscle cramping, chest pain, joint pain, headaches, high
10 grade fever, night sweats and profuse coughing. (Compl. ¶ 16.) Each time Plaintiff was seen by
11 Defendant Relevante and Ogbuehi, Plaintiff was told that he was fine and did not receive any
12 treatment. (Compl. ¶ 17.)

13 On June 30, 2016, Plaintiff began having excruciating pain, shortness of breath, chest
14 pain, and an extremely high fever. (Compl. ¶ 17.) There was no doctor on site, so Plaintiff was
15 rushed to San Joaquin Community Hospital. (Compl. ¶ 17.) The doctor ordered x-rays and a CT
16 scan and Plaintiff was diagnosed with Valley Fever. (Compl. ¶ 18.) Valley Fever is a
17 debilitating, disfiguring and intensely painful disease. (Compl. ¶ 29.) It is a lifelong crippling
18 disease that if not treated quickly, accurately and indefinitely can be fatal. (Compl. ¶ 29.) Many
19 inmates at Pleasant Valley State Prison, Avenal State Prison, and KVSP have died from Valley
20 Fever. (Compl. ¶ 30.)

21 After Plaintiff returned from the hospital he was denied adequate treatment for his joint
22 pain, severe headaches, shortness of breath, and chest pain; however Plaintiff was prescribed
23 Fluconazole for his Valley Fever. (Compl. ¶¶ 19, 41.) Plaintiff did not have Valley Fever prior to
24 being transferred to KVSP. (Compl. ¶ 41.)

25 Plaintiff alleges that he was denied adequate medical care which resulted in him
26 contracting Valley Fever. (Compl. ¶ 20.) Plaintiff also contends that he had pre-existing
27 conditions which the defendants knew he suffered from and that he faced an unacceptably high
28 risk of developing serious medical consequences from his increased risk of Valley Fever while

1 housed at KVSP, a hyper-endemic prison. (Compl. ¶ 22.)

2 Plaintiff states that Defendant Pfeiffer knew as early as 2006 that KVSP is a cocci hot
3 spot, a high endemic area for Valley Fever and that soil surrounding KVSP is densely
4 contaminated with Valley Fever fungus. (Compl. ¶¶ 23, 28, 32.) Defendant Pfeiffer was aware
5 that African Americans and Asian Americans are at greater risk of contracting the disseminated
6 form of Valley Fever and failed to implement any policy to lessen the effects. (Compl. ¶ 24.)
7 Plaintiff wrote a letter to Defendant Pfeiffer around January 10, 2015, explaining that he had a
8 serious medical condition and requested proper medical treatment and protection from Valley
9 Fever spores. (Compl. ¶ 25.) Defendant Pfeiffer failed to take even the most basic precautions
10 to guard Plaintiff from exposure to Valley Fever. (Compl. ¶ 28.)

11 Frequently high winds blow through KVSP causing 10 to 20 foot dust whirlwinds to
12 spread over the prison yard causing inmates to run to different parts of the yard to escape the dust
13 while covering their faces with their t-shirts. (Compl. ¶ 33.) During the summer of 2016 so
14 much dust came through the vents in the housing unit that the dust was almost one inch thick on
15 the dayroom floor and Plaintiff was not offered any protection from the dust. (Compl. ¶ 34.)

16 Defendants were aware that inmates with medical conditions such as Hepatitis C, joint
17 pain, liver disease, arthritis, heart conditions, and diabetes were more susceptible to Valley Fever
18 in its most dangerous form and were in a position to establish or contribute to policies that would
19 have addressed Plaintiff's serious medical need and protect Plaintiff. (Compl. ¶ 37.) About
20 seventy to eighty percent of individuals who develop disseminated disease exhibit severe
21 pulmonary symptoms. (Comp. ¶ 38.) In about ten percent of individuals who develop
22 disseminated disease other organs are involved such as the lungs, skin, skeletal or nervous
23 system. (Compl. ¶ 38.) Defendants were aware that being an African American is a risk factor
24 for developing disseminated disease. (Compl. ¶ 39.)

25 Plaintiff alleges that Defendants Manasrah, Relevante, Ogbuehi, and Pfeiffer were
26 deliberately indifferent to his serious medical needs, failed to order blood tests and MRIs, or
27 refer Plaintiff to a specialist to determine the seriousness of Plaintiff's chronic and excruciating
28 chest pain and continuous complaints. (Compl. ¶ 42.) Plaintiff seeks monetary damages.

1 (Compl. p. 21.)

2 **III.**

3 **DISCUSSION**

4 Section 1983 provides a cause of action for the violation of a plaintiff's constitutional or
5 other federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d
6 1087, 1092 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006);
7 Jones, 297 F.3d at 934. To state a claim under section 1983, Plaintiff must demonstrate that each
8 defendant personally participated in the deprivation of his rights. Iqbal, 556 U.S. at 677;
9 Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of
10 Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones, 297 F.3d at 934. In a section 1983 action,
11 the complaint must allege that every defendant acted with the requisite state of mind to violate
12 underlying constitutional provision. OSU Student Alliance v. Ray, 699 F.3d 1053, 1070 (9th
13 Cir. 2012).

14 **A. Cruel and Unusual Punishment in Violation of the Eighth Amendment**

15 The Eighth Amendment's prohibition against cruel and unusual punishment protects
16 convicted prisoners. Bell v. Wolfish, 441 U.S. 520, 535 (1979); Graham v. Connor, 490 U.S.
17 386, 395 n.10 (1989). Although prison conditions may be restrictive and harsh, prison officials
18 have a duty to ensure that prisoners are provided adequate shelter, food, clothing, sanitation,
19 medical care, and personal safety, Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2000)
20 (quotation marks and citations omitted), but not every injury that a prisoner sustains while in
21 prison represents a constitutional violation, Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.
22 2006) (quotation marks omitted).

23 To maintain an Eighth Amendment claim, a prisoner must show that prison officials were
24 deliberately indifferent to a substantial risk of harm to his health or safety. See, e.g., Farmer v.
25 Brennan, 511 U.S. 825, 847 (1994); Thomas v. Ponder, 611 F.3d 1144, 1150-51 (9th Cir. 2010);
26 Foster v. Runnels, 554 F.3d 807, 812-14 (9th Cir. 2009); Morgan, 465 F.3d at 1045; Johnson,
27 217 F.3d at 731; Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998). In order to state a claim,
28 the plaintiff must allege facts sufficient to support a claim that prison officials knew of and

1 disregarded a substantial risk of serious harm to the plaintiff. Farmer, 511 U.S. at 847; Frost,
2 152 F.3d at 1128.

3 1. Denial of Medical Care

4 While the Eighth Amendment of the United States Constitution entitles Plaintiff to
5 medical care, the Eighth Amendment is violated only when a prison official acts with deliberate
6 indifference to an inmate's serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th
7 Cir. 2012), overruled in part on other grounds, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th
8 Cir. 2014); Wilhelm, 680 F.3d at 1122; Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006). To
9 state a claim a plaintiff "must show (1) a serious medical need by demonstrating that failure to
10 treat [his] condition could result in further significant injury or the unnecessary and wanton
11 infliction of pain," and (2) that "the defendant's response to the need was deliberately
12 indifferent." Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d at 1096). "Deliberate indifference
13 is a high legal standard," Simmons., 609 F.3d at 1019; Toguchi v. Chung, 391 F.3d 1051, 1060
14 (9th Cir. 2004), and is shown by "(a) a purposeful act or failure to respond to a prisoner's pain or
15 possible medical need, and (b) harm caused by the indifference." Wilhelm, 680 F.3d at 1122
16 (citing Jett, 439 F.3d at 1096). The requisite state of mind is one of subjective recklessness,
17 which entails more than ordinary lack of due care. Snow, 681 F.3d at 985 (citation and quotation
18 marks omitted); Wilhelm, 680 F.3d at 1122.

19 Plaintiff alleges that he was seen by Defendant Manasrah on January 5, 2015, and told
20 Defendant Manasrah that he was having excruciating sharp pain in his head, throat, neck, and
21 stomach and that Defendant Manasrah refused to listen to his complaints and told Plaintiff that
22 he was there to be seen for chronic care and Defendant Manasrah refused to evaluate his other
23 medical conditions. (Compl. ¶ 12.) While Plaintiff alleges that every time he saw Defendant
24 Manasrah, Defendant Manasrah "purposely" denied treatment and made false reports that
25 Plaintiff was in no obvious distress and had a normal gait (id. ¶ 15), Plaintiff's conclusory
26 allegations of purposeful denial of treatment are insufficient to demonstrate that Defendant
27 Manasrah was aware that Plaintiff had a serious medical condition and failed to adequately
28 respond. Simmons, 609 F.3d at 1018.

1 Plaintiff also alleges that he submitted health care requests on April 4, 2016; April 25,
2 2016; May 26, 2016; and June 11, 2016, complaining of shortness of breath, muscle cramping,
3 chest pain, joint pain, headaches, high grade fever, night sweats, and profuse coughing. (Compl.
4 ¶ 16.) Each time, Defendants Relevant and Ogbuehi told him that he was fine and did not treat
5 his symptoms. (Compl. ¶ 17.) While Plaintiff alleges that his symptoms were not treated, the
6 complaint does not contain any allegations that the defendants refused to examine Plaintiff or
7 describe what occurred at these examinations. “A difference of opinion between a physician and
8 the prisoner—or between medical professionals—concerning what medical care is appropriate
9 does not amount to deliberate indifference.” Snow, 681 F.3d at 987 (citing Sanchez v. Vild, 891
10 F.2d 240, 242 (9th Cir. 1989)); Wilhelm, 680 F.3d at 1122-23 (citing Jackson v. McIntosh, 90
11 F.3d 330, 332 (9th Cir. 1986)). Rather, a plaintiff is required to show that the course of
12 treatment selected was “medically unacceptable under the circumstances” and that the defendant
13 “chose this course in conscious disregard of an excessive risk to plaintiff’s health.” Snow, 681
14 F.3d at 988 (quoting Jackson, 90 F.3d at 332). The allegations in the complaint are insufficient
15 to state a cognizable claim that Defendants Relevante and Ogbuehi were aware that Plaintiff had
16 a serious medical condition and failed to adequately respond. Simmons, 609 F.3d at 1018.

17 It appears that the crux of Plaintiff’s complaint is that Defendants Manasrah, Relevante,
18 and Ogbuehi were deliberately indifferent because they failed to diagnose that he had Valley
19 Fever prior to June 30, 2016. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will
20 not support this cause of action.” Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir.
21 1980) (citing Estelle v. Gamble, 429 U.S. 97, 105-06 (1976)). “Medical malpractice does not
22 become a constitutional violation merely because the victim is a prisoner.” Estelle, 429 U.S. at
23 106; Snow, 681 F.3d at 987-88; Wilhelm, 680 F.3d at 1122 (“The deliberate indifference
24 doctrine is limited in scope.”). Plaintiff fails to allege sufficient facts for the Court to reasonably
25 infer that Defendants Manasrah, Relevante, or Ogbuehi were aware that Plaintiff had Valley
26 Fever and failed to provide adequate treatment prior to June 30, 2016.

27 Plaintiff also alleges that after he was diagnosed with Valley Fever and returned from the
28 hospital he was continuously denied adequate treatment for his joint pain, severe headaches,

1 shortness of breath, and chest pain, but that he was prescribed Fluconzole for his Valley Fever.
2 (Compl. ¶ 19.) As stated above, to state a claim under section 1983, Plaintiff must demonstrate
3 that each defendant personally participated in the deprivation of his rights. Iqbal, 556 U.S. at
4 677. Plaintiff has not alleged that he saw any named defendant after he was diagnosed with
5 Valley Fever, therefore, Plaintiff has failed to link any defendant to any failure to provide
6 treatment after he was diagnosed with Valley Fever. Iqbal, 556 U.S. at 677. Also, by Plaintiff's
7 own admission he was prescribed medication, Fluconzole, for his Valley Fever and the fact that
8 Plaintiff may have wanted additional or different treatment is insufficient to state a claim.
9 Sanchez, 891 F.2d at 242. Plaintiff's conclusory allegation of denial of adequate treatment is
10 insufficient to state a claim.

11 Plaintiff fails to state a cognizable claim that any defendant was deliberately indifferent
12 to his serious medical needs by failing to provide adequate medical care.

13 2. Conditions of Confinement

14 Plaintiff alleges that Defendant Pfeiffer was deliberately indifferent by failing to take
15 reasonable measures to protect Plaintiff from contracting Valley Fever. (Compl. ¶¶ 51-60.)
16 Where an inmate is challenging the conditions of confinement he must show there was a
17 deprivation "sufficiently serious" to form the basis of a violation and "the prison official acted
18 "with a sufficiently culpable state of mind." Johnson, 217 F.3d at 731 (quoting Wilson v. Seiter,
19 501 U.S. 294, 298 (1991)). The circumstances, nature, and duration of the deprivations are
20 critical in determining whether the conditions complained of are grave enough to form the basis
21 of a viable Eighth Amendment claim. Johnson, 217 F.3d at 731.

22 Plaintiff alleges that Defendant Pfeiffer was aware that he was at increased risk of
23 disseminated disease due to his Hepatitis and failed to take reasonable measures to protect
24 Plaintiff from contracting Valley Fever. However, while Plaintiff states that there are other
25 factors that put individuals at risk he has not identified any other factors that would apply to him.
26 At the pleading stage, the Court finds that Plaintiff's complaint is sufficient to state cognizable
27 claim against Defendant Pfeiffer for violation of the Eighth Amendment based on Plaintiff's
28 allegations that he was at an increased risk of disseminated disease due to his Hepatitis.

1 IV.

2 CONCLUSION AND ORDER

3 Plaintiff's complaint states a cognizable claim against Defendant Pfeiffer for deliberate
4 indifference in violation of the Eighth Amendment based on Plaintiff's alleged increased risk of
5 disseminated disease due to having Hepatitis. However, Plaintiff has not sufficiently alleged
6 facts to state any other cognizable claims or claims against any other defendant. The Court will
7 provide Plaintiff with the opportunity to file an amended complaint to cure the deficiencies
8 identified by the Court in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987).
9 Plaintiff may not change the nature of this suit by adding new, unrelated claims in his amended
10 complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints).

11 If Plaintiff does not wish to file an amended complaint and is agreeable to proceeding
12 only against Defendant Pfeiffer for deliberate indifference, Plaintiff may so notify the Court in
13 writing, and the Court will dismiss the other defendants and claims, and will forward Plaintiff
14 one (1) summons and one (1) USM-285 form for completion and return. Upon receipt of the
15 forms, the Court will direct the United States Marshal to initiate service of process.

16 If Plaintiff opts to amend, his amended complaint should be brief. Fed. R. Civ. P. 8(a).
17 Plaintiff must identify how each individual defendant caused the deprivation of Plaintiff's
18 constitutional or other federal rights: "The inquiry into causation must be individualized and
19 focus on the duties and responsibilities of each individual defendant whose acts or omissions are
20 alleged to have caused a constitutional deprivation." Leer v. Murphy, 844 F.2d 628, 633 (9th
21 Cir. 1988).

22 Although Plaintiff's factual allegations will be accepted as true and "the pleading
23 standard Rule 8 announces does not require 'detailed factual allegations,'" "a complaint must
24 contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its
25 face.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555). "A claim has facial
26 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable
27 inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678 (citing
28 Twombly, 550 U.S. at 556).

1 Plaintiff is advised that an amended complaint supersedes the original complaint.
2 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565,
3 567 (9th Cir. 1987). The amended complaint must be “complete in itself without reference to the
4 prior or superseded pleading.” Local Rule 220. Plaintiff is warned that “[a]ll causes of action
5 alleged in an original complaint which are not alleged in an amended complaint are waived.”
6 King, 814 F.2d at 567 (citing London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981));
7 accord Forsyth, 114 F.3d at 1474. In other words, even the claims that were properly stated in
8 the original complaint must be completely stated again in the amended complaint.

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

- 10 1. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 11 2. Within thirty (30) days from the date of service of this order, Plaintiff must either:
 - 12 a. File an amended complaint curing the deficiencies identified by the Court in this
13 order, or
 - 14 b. Notify the Court in writing that he does not wish to file an amended complaint
15 and wishes to proceed only against Defendant Pfeiffer for deliberate indifference
16 in violation of the Eighth Amendment based on Plaintiff’s allegation that he was
17 at an increased risk of disseminated disease due to his Hepatitis; and
- 18 3. If Plaintiff fails to comply with this order, this action will be dismissed for failure
19 to obey a court order.

20
21 IT IS SO ORDERED.

22 Dated: September 13, 2017


UNITED STATES MAGISTRATE JUDGE