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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 SHAUNTAE TAYLOR,

12 Plaintiff,

13 v.

14 C. RELEVANTE, *et al.*,

15 Defendants.
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Case No. 1:18-cv-00641-JDP

SCREENING ORDER

FINDINGS AND RECOMMENDATIONS TO
DISMISS CASE FOR FAILURE TO STATE A
CLAIM

OBJECTIONS DUE IN 14 DAYS

ORDER DIRECTING CLERK OF COURT TO
ASSIGN CASE TO DISTRICT JUDGE

ECF No. 1

20 Plaintiff is a state prisoner proceeding without counsel in this civil rights action brought
21 under 42 U.S.C. § 1983. Plaintiff's Complaint, filed May 10, 2018, is before the court for
22 screening under 28 U.S.C. § 1915A. Plaintiff claims deliberate indifference to his serious
23 medical needs, but his allegations are not sufficient to state a constitutional deprivation under 42
24 U.S.C. § 1983. Accordingly, we recommend that the complaint be dismissed without prejudice.

25 **I. STATEMENT OF FACTS¹**

26 Plaintiff was incarcerated at Kern Valley State Prison ("KVSP") during the relevant
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28 ¹ We draw the following facts from plaintiff's complaint, ECF No. 1, and accept them as true for screening purposes.

1 timeframe. ECF No. 1 at 1. Defendants are physicians at KVSP. *Id.* at 2. Plaintiff arrived at
2 KVSP from Corcoran State Prison on March 13, 2017. *Id.* at 7. At Corcoran, plaintiff had
3 undergone pain management treatment for nerve damage in his foot. *Id.* Plaintiff underwent
4 various medical tests, tried multiple treatments and medicines, and consulted with a podiatrist.
5 *Id.* After nearly two years of unsuccessful pain management, plaintiff was prescribed gabapentin
6 on December 13, 2016. *Id.* Plaintiff was also proscribed oxcarbazepine. *See id.* at 11.

7 On April 13, 2017, after plaintiff transferred to KVSP, his gabapentin prescription was
8 discontinued. *See id.* at 8-9, 13. On April 17, 2017, “plaintiff saw primary care provider
9 [defendant] Relevante” to have his prescriptions renewed. *Id.* at 9, 12.² Defendant Relevante did
10 not review plaintiff’s medical history from Corcoran, where he had tried other types of treatment
11 for his foot pain. *Id.* Plaintiff attempted to explain that he had already gone through that process,
12 but defendant Relevante “refused to listen.” *Id.* at 10. Defendant Relevante “attempted to make
13 [plaintiff] try other medications.” *Id.* Defendant Relevante “briefly looked at both [of plaintiff’s]
14 feet” during the visit. *Id.* Plaintiff “became very upset” and “was by force drug out of the
15 medical visit.” *Id.* at 11. Plaintiff claims that “no alternative medication of equal management
16 force was discussed,” and that defendant Relevante falsely documented “that he offered
17 oxcarbazepine and amitriptyline.” *Id.* About a week later, plaintiff began to take nortriptyline.
18 *Id.* at 11. About two months later, plaintiff stopped taking nortriptyline and resumed taking
19 oxcarbazepine. *Id.* at 12. Plaintiff seeks to resume taking gabapentin or an equivalent medicine.
20 *Id.* at 15.

21 On May 31, 2017, “plaintiff’s left leg went out on him” because of his foot pain, and he
22 fell. *Id.* at 13. The fall injured his lower back, which had been damaged previously. *Id.* On June
23 2, 2017, “plaintiff was sent to KVSP clinic triage center” and was given a walker that he used

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25 ² Plaintiff makes repeated references to exhibits but attached no exhibits to his complaint, making
26 his complaint somewhat difficult to understand. Should plaintiff object to these findings and
27 recommendations, he should include all documents that he wishes the court to consider. If
28 plaintiff decides to file an amended complaint, the amended complaint will supersede the original
complaint, *Lacey v. Maricopa County*, 693 F. 3d 896, 907 n.1 (9th Cir. 2012) (en banc), and the
amended complaint must be complete on its face without reference to the prior, superseded
pleading, *see* E.D. Cal. Local Rule 220.

1 until September 14, 2017. *Id.* On June 6, 2017, defendant “Wang ordered plaintiff to undergo
2 physical therapy.” *Id.* Plaintiff “grew so very upset with yet another doctor’s negligence and
3 continued refusal to re-order his [medicine that] plaintiff attempted to attack the escorting
4 corrections officer with his walker.” *Id.* Plaintiff was not scheduled for physical therapy until
5 January 2018. *Id.*

6 Plaintiff’s medical appeals—seeking gabapentin—were denied at the first level of the
7 appeal by defendant Ulrt. *Id.* at 14

8 **II. SCREENING AND PLEADING REQUIREMENTS**

9 A district court is required to screen a prisoner’s complaint that seeks relief against a
10 governmental entity, its officer, or its employee. *See* 28 U.S.C. § 1915A(a). The court must
11 identify any cognizable claims and dismiss any portion of the complaint that is frivolous or
12 malicious, that fails to state a claim upon which relief may be granted, or that seeks monetary
13 relief from a defendant who is immune from such relief. *See* 28 U.S.C. §§ 1915A(b)(1), (2). The
14 court must construe an unrepresented litigant’s complaint liberally. *Haines v. Kerner*, 404 U.S.
15 519, 520 (1972) (per curiam).

16 A complaint must contain a short and plain statement that plaintiff is entitled to relief,
17 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its
18 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The short and plain statement “need
19 only give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.”
20 *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (quoting *Twombly*, 550 U.S. at 555 (internal
21 quotation marks omitted)). The complaint need not identify “a precise legal theory.” *Kobold v.*
22 *Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024, 1038 (9th Cir. 2016) (quoting *Skinner v.*
23 *Switzer*, 562 U.S. 521, 530 (2011)). The plausibility standard does not require detailed
24 allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
25 If the allegations “do not permit the court to infer more than the mere possibility of misconduct,”
26 the complaint states no claim. *Id.* at 679.

27 **III. DISCUSSION**

28 Section 1983 allows a private citizen to sue for the deprivation of a right secured by

1 federal law. *See* 42 U.S.C. § 1983; *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 916 (2017). To
2 state a claim under 42 U.S.C. § 1983, a plaintiff must (1) allege the deprivation of a right secured
3 by the U.S. Constitution and laws of the United States, and (2) show that the alleged deprivation
4 was committed by a person acting under color of state law. *See West v. Atkins*, 487 U.S. 42, 48
5 (1988). A person deprives another of a constitutional right, “within the meaning of § 1983, ‘if he
6 does an affirmative act, participates in another’s affirmative act, or omits to perform an act which
7 he is legally required to do that causes the deprivation of which complaint is made.’”
8 *Preschooler II v. Clark Cty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting
9 *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)).

10 At the outset, we recognize that allegations of medical negligence are insufficient to state
11 a claim for deliberate indifference to serious medical needs. *See Clement v. Gomez*, 298 F.3d
12 898, 904 (9th Cir. 2002). Additionally, a difference of opinion concerning the judgment of
13 treating medical professionals falls outside the scope of § 1983. *See Sanchez v. Vild*, 891 F.2d
14 240, 242 (9th Cir. 1989). A deliberate indifference to serious medical needs claim consists of two
15 parts: (1) a “serious medical need” demonstrated by a failure to treat a prisoner’s medical
16 condition that could result in further significant injury or the unnecessary and wanton infliction of
17 pain; and (2) “deliberate indifference” —demonstrated by (a) a purposeful act or failure to
18 respond to a prisoner’s pain or possible medical need and (b) harm caused by the indifference.
19 *See Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006).

20 Plaintiff sufficiently alleges a serious medical need because his foot condition causes him
21 pain and was extensively evaluated for treatment. However, plaintiff has failed to allege
22 deliberate indifference on the part of any defendant. Defendant Ulrt merely denied plaintiff’s
23 medical appeals at the first level. Plaintiff has failed to allege facts that, even liberally construed,
24 could support a finding of deliberate indifference on the part of defendant Ulrt. *See Jett*, 439 F.3d
25 at 1096.

26 Defendants Relevante and Wang each provided plaintiff with medical care and did not
27 agree with plaintiff that the medicine gabapentin should be prescribed. A mere difference in
28 medical opinion between a doctor and a prisoner is not enough to show medical deliberate

1 indifference in violation of the Eighth Amendment. *See Sanchez*, 891 F.2d at 242. Even if
2 defendants were negligent, as plaintiff claims, medical negligence is not sufficient to state a
3 claim. *See Clement*, 298 F.3d at 904. Plaintiff's allegations, liberally construed, do not
4 demonstrate medical deliberate indifference. Therefore, plaintiff's complaint should be dismissed
5 without prejudice.

6 **IV. CONCLUSION**

7 The court has screened plaintiff's complaint and finds that it fails to state a cognizable
8 claim against any defendant. Should plaintiff seek to amend the complaint,³ the amended
9 complaint should be brief, Fed. R. Civ. P. 8(a), but must state what actions each named defendant
10 took that deprived plaintiff of constitutional or other federal rights. *See Iqbal*, 556 U.S. at 678;
11 *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff must allege that each defendant
12 personally participated in the deprivation of his rights. *See Jones*, 297 F.3d at 934. A short,
13 concise statement in which the allegations are ordered chronologically will help the court identify
14 his claims. Plaintiff should describe how each defendant wronged him, the circumstances
15 surrounding each of the claimed violations, and any harm he suffered.

16 **V. ORDER**

17 The clerk of court is directed to assign this case to a district judge who will review the
18 findings and recommendations.

19 **VI. RECOMMENDATIONS**

20 The undersigned has screened plaintiff's complaint and finds that plaintiff has failed to
21 state a claim of medical deliberate indifference in violation of the Eighth Amendment against any
22 defendant. We recommend that the court dismiss the case without prejudice.

23 These findings and recommendations are submitted to the U.S. district judge presiding
24 over the case under 28 U.S.C. § 636(b)(1)(B) and Local Rule 304. Within fourteen days of the
25 service of the findings and recommendations, the parties may file written objections to the

26 ³ Plaintiff may not change the nature of this suit by adding new, unrelated claims or new,
27 unrelated defendants in his amended complaint. *See Fed. R. Civ. P. 18; George v. Smith*, 507
28 F.3d 605, 607 (7th Cir. 2007) ("Unrelated claims against different defendants belong in different
suits . . .").

1 findings and recommendations with the court and serve a copy on all parties. That document
2 must be captioned "Objections to Magistrate Judge's Findings and Recommendations." The
3 presiding district judge will then review the findings and recommendations under 28 U.S.C.
4 § 636(b)(1)(C).

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6 IT IS SO ORDERED.

7 Dated: March 27, 2019


UNITED STATES MAGISTRATE JUDGE

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