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8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

10
11 DEANDRE SILAS,

12 Plaintiff,

13 v.

14 BARBOSA,

15 Defendant.

Case No. 1:23-cv-00669-ADA-BAM (PC)

FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION FOR
FAILURE TO PROSECUTE, FAILURE TO
OBEY A COURT ORDER, AND FAILURE
TO STATE A CLAIM

(ECF No. 14)

FOURTEEN (14) DAY DEADLINE

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18 **I. Background**

19 Plaintiff DeAndre Silas ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*
20 *pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

21 On July 12, 2023, the Court screened the first amended complaint and issued findings and
22 recommendations that this action be dismissed for failure to state a cognizable claim upon which
23 relief may be granted. (ECF No. 13.) Plaintiff did not file objections. On August 17, 2023, the
24 findings and recommendations were adopted in part, to the extent they recognized that Plaintiff's
25 first amended complaint failed to state a cognizable claim, but granted Plaintiff leave to file a
26 second amended complaint or a notice of voluntary dismissal within thirty days. (ECF No. 14.)
27 Plaintiff was also warned that failure to comply with the Court's order would result in dismissal
28 of this action, with prejudice, for failure to obey a court order and failure to state a claim. (*Id.* at

1 3.) The order was served on Plaintiff at his current address of record at the California Health
2 Care Facility in Stockton, California. On August 28, 2023, the Court's order was returned as
3 "Undeliverable, Vacant, Unable to Forward."

4 The deadline for Plaintiff to respond to the Court's order has now expired, and Plaintiff
5 has not filed a notice of change of address or otherwise communicated with the Court.

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

7 **A. Screening Requirement**

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

13 A complaint must contain "a short and plain statement of the claim showing that the
14 pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
15 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
16 conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
17 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff's allegations are taken as
18 true, courts "are not required to indulge unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*,
19 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

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

26 **B. Plaintiff's Allegations**

27 Plaintiff is currently housed at California Health Care Facility in Stockton, California.
28 Plaintiff alleges that the events in the complaint occurred while he was housed at California State

1 Prison at Corcoran. Plaintiff names Barbosa, Peace Officer, as the sole defendant.

2 Plaintiff alleges: “I was denied my right to medical care which lead to cruel and unusual
3 punishment.” As factual support of his claim, Plaintiff alleges: “On 12-24-22 during medication
4 pass c/o Barbosa refused to open my tray slot so the medical nurse could give me my medication
5 because I suffer from a mental disability which only got worse from me not taking my
6 medication.”

7 As remedies, Plaintiff requests compensatory damages.

8 **C. Discussion**

9 Plaintiff’s complaint fails to comply with Federal Rule of Civil Procedure 8 and fails to
10 state a cognizable claim under 42 U.S.C. § 1983.

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

12 Pursuant to Rule 8, a complaint must contain “a short and plain statement of the claim
13 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). Detailed factual allegations
14 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
15 conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678 (citation omitted). Plaintiff must
16 set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on
17 its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). While factual allegations
18 are accepted as true, legal conclusions are not. *Id.*; *see also Twombly*, 550 U.S. at 556–57; *Moss*,
19 572 F.3d at 969.

20 Here, Plaintiff’s complaint is short, but not a plain statement of his claims. Much of
21 Plaintiff’s allegations is conclusory as to what happened or when it happened. In the Court’s
22 prior screening, Plaintiff was informed that he should state his key factual allegations in the body
23 of the complaint to comply with the provided legal standards. Plaintiff has been unable to cure
24 this deficiency to include factual allegations identifying what happened, when it happened and
25 who was involved. Fed. R. Civ. P. 8.

26 **2. Eighth Amendment Deliberate Indifference to Medical Care**

27 Plaintiff may be attempting to allege a claim for deliberate indifference to medical care.
28 A prisoner’s claim of inadequate medical care constitutes cruel and unusual punishment in

1 violation of the Eighth Amendment where the mistreatment rises to the level of “deliberate
2 indifference to serious medical needs.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006)
3 (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). The two-part test for deliberate
4 indifference requires Plaintiff to show (1) “a ‘serious medical need’ by demonstrating that failure
5 to treat a prisoner’s condition could result in further significant injury or the ‘unnecessary and
6 wanton infliction of pain,’” and (2) “the defendant’s response to the need was deliberately
7 indifferent.” *Jett*, 439 F.3d at 1096.

8 A defendant does not act in a deliberately indifferent manner unless the defendant “knows
9 of and disregards an excessive risk to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825,
10 837 (1994). “Deliberate indifference is a high legal standard,” *Simmons v. Navajo Cty. Ariz.*, 609
11 F.3d 1011, 1019 (9th Cir. 2010); *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004), and is
12 shown where there was “a purposeful act or failure to respond to a prisoner’s pain or possible
13 medical need” and the indifference caused harm. *Jett*, 439 F.3d at 1096. In applying this
14 standard, the Ninth Circuit has held that before it can be said that a prisoner’s civil rights have
15 been abridged, “the indifference to his medical needs must be substantial. Mere ‘indifference,’
16 ‘negligence,’ or ‘medical malpractice’ will not support this cause of action.” *Broughton v. Cutter*
17 *Labs.*, 622 F.2d 458, 460 (9th Cir. 1980) (citing *Estelle*, 429 U.S. at 105–06). Even gross
18 negligence is insufficient to establish deliberate indifference to serious medical needs. *See Wood*
19 *v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990).

20 Liberally construing the first amended complaint, Plaintiff states a serious medical need
21 for a mental disability. However, Plaintiff has not alleged facts that Defendant’s response was
22 deliberately different. Plaintiff alleges that Defendant did not open the tray slot during a
23 medication pass. Plaintiff fails to allege facts that Defendant knew of and disregarded an
24 excessive risk to inmate health or safety. There are no allegations that Defendant knew he was
25 denying medication, knew Plaintiff needed medical or had a serious medical need or that
26 Defendant deliberately did not allow medication. Plaintiff has been unable to cure this
27 deficiency.

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

A. Legal Standard

Plaintiff is required to keep the Court apprised of his current address at all times. Local Rule 183(b) provides:

Address Changes. A party appearing in propria persona shall keep the Court and opposing parties advised as to his or her current address. If mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing parties within sixty-three (63) days thereafter of a current address, the Court may dismiss the action without prejudice for failure to prosecute.

Federal Rule of Civil Procedure 41(b) also provides for dismissal of an action for failure to prosecute.¹

Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any and all sanctions . . . within the inherent power of the Court.” District courts have the inherent power to control their dockets and “[i]n the exercise of that power they may impose sanctions including, where appropriate, . . . dismissal.” *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987) (dismissal for failure to comply with court order).

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

¹ Courts may dismiss actions sua sponte under Rule 41(b) based on the plaintiff’s failure to prosecute. *Hells Canyon Pres. Council v. U. S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (citation omitted).

1 **B. Discussion**

2 Here, Plaintiff's address change was due no later than October 30, 2023, and Plaintiff's
3 response to the Court's August 17, 2023 order is also overdue. Plaintiff has failed to comply with
4 the Court's order or otherwise communicate with the Court. The Court cannot effectively
5 manage its docket if Plaintiff ceases litigating his case. Thus, the Court finds that both the first
6 and second factors weigh in favor of dismissal.

7 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
8 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
9 *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against
10 dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d
11 639, 643 (9th Cir. 2002). However, "this factor lends little support to a party whose
12 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
13 progress in that direction," which is the case here. *In re Phenylpropanolamine (PPA) Products*
14 *Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

15 Finally, the Court's warning to a party that failure to obey the court's order will result in
16 dismissal satisfies the "considerations of the alternatives" requirement. *Ferdik*, 963 F.2d at 1262;
17 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court's August 17, 2023 order
18 expressly warned Plaintiff that his failure to comply with the Court's order would result in
19 dismissal of this action, with prejudice, for failure to obey a court order and for failure to state a
20 claim. (ECF No. 14, p. 3.) Thus, Plaintiff had adequate warning that dismissal could result from
21 his noncompliance.

22 Additionally, at this stage in the proceedings there is little available to the Court that
23 would constitute a satisfactory lesser sanction while protecting the Court from further
24 unnecessary expenditure of its scarce resources. Plaintiff is proceeding *in forma pauperis* in this
25 action, making monetary sanctions of little use, and the preclusion of evidence or witnesses is
26 likely to have no effect given that Plaintiff has ceased litigating his case and updating his address.
27 More importantly, given the Court's apparent inability to communicate with Plaintiff, there are no
28 other reasonable alternatives available to address Plaintiff's failure to prosecute this action and his

1 failure to apprise the Court of his current address. *In re PPA*, 460 F.3d at 1228–29; *Carey*, 856
2 F.2d at 1441.

3 **IV. Order and Recommendation**

4 Accordingly, the Court finds that dismissal is the appropriate sanction and HEREBY
5 RECOMMENDS that this action be dismissed, with prejudice, for failure to obey a Court order,
6 failure to prosecute, and for failure to state a claim.

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

15
16 IT IS SO ORDERED.

17 Dated: November 13, 2023

17 /s/ Barbara A. McAuliffe
18 UNITED STATES MAGISTRATE JUDGE