IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AARON JAMES PIERCE,

Plaintiff, No. CIV S-08-1148 FCD DAD P

vs.

JEANNE S. WOODFORD, et al.,

Defendants. ORDER

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Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983.

PROCEDURAL HISTORY

On November 5, 2003, plaintiff filed a complaint in the United States District Court for the Northern District of California. On July 14, 2004, that court granted plaintiff leave to proceed in forma pauperis and dismissed his complaint with leave to amend. On August 3, 2004, plaintiff filed an amended complaint. On April 30, 2008, the Northern District screened plaintiff's amended complaint. The claims set out in plaintiff's complaint concerned medical care and treatment at the California State Prison facilities known as the Correctional Training Facility, High Desert State Prison and Mule Creek State Prison. Plaintiff also alleged that he

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suffered three assaults, two at the hands of fellow inmates and one by prison staff, all while confined at High Desert State Prison.

As to plaintiff's claims concerning events that allegedly took place at High Desert State Prison and Mule Creek State Prison, the United States District Court for the Northern District of California explained that venue was proper in the Eastern District of California and transferred those claims to this court. As to plaintiff's claims concerning events that allegedly took place at the Correctional Training Facility, the court determined in a separate order that plaintiff had failed to identify the specific individuals he claims caused his constitutional injuries and dismissed the amended complaint while granted plaintiff leave to file a second amended complaint within thirty days.

PROCEEDING IN THIS CASE

If plaintiff elects to proceed in this action, he must file an in forma pauperis affidavit or pay the required filing fee ($350.00). See 28 U.S.C. §§ 1914(a), 1915(a). Plaintiff is cautioned that the in forma pauperis application form includes a section that must be completed by a prison official, and the form must be accompanied by a certified copy of plaintiff's prison trust account statement for the six-month period immediately preceding the filing of this action. Plaintiff will be provided thirty days leave to either submit the appropriate affidavit in support of a request to proceed in forma pauperis or to submit the appropriate filing fee.

In addition, if plaintiff elects to proceed in this action before this court, he must file a second amended complaint here as well. As the United States District Court for the Northern District of California observed, in his amended complaint plaintiff fails to allege any specific causal link between the actions of the named defendants and the claimed constitutional violations. Accordingly, plaintiff's amended complaint will be dismissed with leave to file a second amended complaint. In any second amended complaint he elects to file, plaintiff must allege what events he claims took place at High Desert State Prison and Mule Creek State Prison that resulted in his constitutional rights being violated and name the defendants that were

involved in those events. Plaintiff must allege with at least some degree of particularity overt acts which each defendant engaged in that support his claims. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984).

Plaintiff is advised that the Civil Rights Act, under which this action was filed, provides as follows:

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

42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

Moreover, supervisory personnel are generally not liable under § 1983 for the actions of their employees under a theory of respondeat superior and, therefore, when a named defendant holds a supervisorial position, the causal link between him and the claimed constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations concerning the involvement of official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

Plaintiff is also advised that Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, ___, 127 S. Ct. 1955, 1965

(2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). However, in order to survive dismissal for failure to state a claim a complaint must contain more than "a formulaic recitation of the elements of a cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 127 S. Ct. at 1965.

Although the Federal Rules of Civil Procedure adopt a flexible pleading policy, a complaint must give fair notice to the defendants and must allege facts that support the elements of the claim plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

Finally, plaintiff is advised of the following legal standards that govern Eighth Amendment claims such as those he is attempting to pursue in this action. The Eighth Amendment prohibits the infliction of "cruel and unusual punishments." U.S. Const. amend. VIII. It is well established that the "unnecessary and wanton infliction of pain" constitutes cruel and unusual punishment prohibited by the United States Constitution. Whitley v. Albers, 475 U.S. 312, 319 (1986). See also Ingraham v. Wright, 430 U.S. 651, 670 (1977); Estelle v. Gamble, 429 U.S. 97, 105-06 (1976). Neither accident nor negligence constitutes cruel and unusual punishment, as "[i]t is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause." Whitley, 475 U.S. at 319.

What is needed to show unnecessary and wanton infliction of pain "varies according to the nature of the alleged constitutional violation." Hudson v. McMillian, 503 U.S. 1, 5 (1992) (citing Whitley, 475 U.S. at 320). The plaintiff must show that objectively he suffered a sufficiently serious deprivation and that subjectively each defendant had a culpable

state of mind in allowing or causing the plaintiff's deprivation to occur. Wilson v. Seiter, 501 U.S. 294, 298-99 (1991).

"The objective component of an Eighth Amendment claim is . . . contextual and responsive to 'contemporary standards of decency.'" Hudson, 503 U.S. at 8 (quoting Estelle, 429 U.S. at 103). The objective prong of the test requires the court to consider whether the alleged wrongdoing was harmful enough to establish a constitutional violation. Hudson, 503 U.S. at 8; Wilson, 501 U.S. at 298. In the context of an excessive use of force claim, however, the objective prong does not require a prisoner to show a "significant injury" in order to establish that he suffered a sufficiently serious constitutional deprivation. 503 U.S. at 9-10.

The subjective prong of the two-part test is also contextual. Wilson, 501 U.S. at 299. A prison official acts with the requisite "culpable mind" with respect to an excessive use of force claim if he acts maliciously and sadistically for the purpose of causing harm. Whitley, 475 U.S. at 320-21. "[W]henever prison officials stand accused of using excessive physical force in violation of the Cruel and Unusual Punishments Clause, the core judicial inquiry is that set out in Whitley, i.e., whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." Hudson, 503 U.S. at 6-7.

Where a prisoner's Eighth Amendment claims arise in the context of medical care, the prisoner must allege and prove "acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle, 429 U.S. at 106. An Eighth Amendment medical care claim has two elements: "the seriousness of the prisoner's medical need and the nature of the defendant's response to that need." McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1991), overruled on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc).

A medical need is serious "if the failure to treat the prisoner's condition could result in further significant injury or the 'unnecessary and wanton infliction of pain.'" McGuckin, 974 F.2d at 1059 (quoting Estelle, 429 U.S. at 104). Indications of a serious medical

need include "the presence of a medical condition that significantly affects an individual's daily activities." Id. at 1059-60. By establishing the existence of a serious medical need, a prisoner satisfies the objective requirement for proving an Eighth Amendment violation. Farmer v. Brennan, 511 U.S. 825, 834 (1994).

If a prisoner establishes the existence of a serious medical need, he must then show that prison officials responded to that need with deliberate indifference. Farmer, 511 U.S. at 834. In general, deliberate indifference may be shown when prison officials deny, delay, or intentionally interfere with medical treatment, or may be shown by the way in which prison officials provide medical care. Hutchinson v. United States, 838 F.2d 390, 393-94 (9th Cir. 1988). Before it can be said that a prisoner's civil rights have been abridged with regard to medical care, however, "the indifference to his medical needs must be substantial. Mere 'indifference,' 'negligence,' or 'medical malpractice' will not support this cause of action." Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105-06). See also Toguchi v. Soon Hwang Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) ("Mere negligence in diagnosing or treating a medical condition, without more, does not violate a prisoner's Eighth Amendment rights."); McGuckin, 974 F.2d at 1059 (same). Deliberate indifference is "a state of mind more blameworthy than negligence" and "requires 'more than ordinary lack of due care for the prisoner's interests or safety.'" Farmer, 511 U.S. at 835 (quoting Whitley, 475 U.S. at 319).

Finally, where an Eighth Amendment claim arises in the context of a prison official's failure to protect a prisoner from harm, the Supreme Court has held that a prison official violates the Eighth Amendment "only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." Farmer, 511 U.S. at 847. Under this standard, a prison official must have a "sufficiently culpable state of mind," one of deliberate indifference to the inmate's health or safety. Id. at 834.

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Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an amended complaint be complete in itself without reference to any prior pleading. This is because, as a general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

OTHER MATTERS

On April 30, 2008, prior to the United States District Court for the Northern District of California transferring the case to this court, plaintiff filed a motion for summary judgment on his amended complaint. For reasons discussed herein, plaintiff's amended complaint will be dismissed with leave granted to file a second amended complaint. Accordingly, plaintiff's motion for summary judgment based upon his amended complaint which has now been dismissed will be denied.[1]

CONCLUSION

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff shall submit, within thirty days from the date of this order, either the $350.00 filing fee or a properly completed application to proceed in forma pauperis on the form provided with this order;

2. Plaintiff's amended complaint is dismissed;

3. Plaintiff is granted thirty days from the date of service of this order to file a second amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice; the second amended complaint

[1] The United States District Court for the Northern District of California denied plaintiff's motion for summary judgment pending before that court for the same reason. (Order Filed in Case No. CIV 5-03-4934 JF (PR) (N.D. Cal. June 4, 2008)).

must bear the docket number assigned to this case and must be labeled "Second Amended Complaint";

4. Plaintiff's failure to comply with this order will result in a recommendation that this action be dismissed;

5. Plaintiff's motion for summary judgment (Doc. No. 100) is denied without prejudice to filing a motion for summary judgment at the appropriate time based on a second amended complaint which plaintiff may elect to file with court; and

6. The Clerk of the Court is directed to send plaintiff the application to proceed in forma pauperis by a prisoner and the court's form for filing a civil rights action.

DATED: January 7, 2009.

DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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