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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS YEUNG,

Plaintiff,

No. CIV S-10-0735 GGH P

vs.

RICHARD IVES,

Defendant.

ORDER

_____/

Plaintiff is a federal prisoner proceeding pro se and in forma pauperis. He seeks relief pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999 (1971), which provides a remedy for violation of civil rights by federal actors. Plaintiff’s original complaint was dismissed with leave to amend and plaintiff has timely filed an amended complaint.

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 upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
3 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
5 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
6 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
7 Cir. 1989); Franklin, 745 F.2d at 1227.

8 A complaint must contain more than a “formulaic recitation of the elements of a
9 cause of action;” it must contain factual allegations sufficient to “raise a right to relief above the
10 speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007).
11 “The pleading must contain something more...than...a statement of facts that merely creates a
12 suspicion [of] a legally cognizable right of action.” Id., quoting 5 C. Wright & A. Miller, Federal
13 Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). “[A] complaint must contain sufficient
14 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft
15 v. Iqbal, ___ U.S. ___, 129 S.Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 570, 127 S.Ct.
16 1955). “A claim has facial plausibility when the plaintiff pleads factual content that allows the
17 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
18 Id.

19 In reviewing a complaint under this standard, the court must accept as true the
20 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.
21 738, 740, 96 S.Ct. 1848 (1976), construe the pleading in the light most favorable to the plaintiff,
22 and resolve all doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421, 89 S.Ct.
23 1843 (1969).

24 The complaint states a colorable claim for relief against defendant Dr. Gulani,
25 pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b).

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1 Plaintiff also names three other defendants. Plaintiff states that defendant Causey
2 is his case manger and was supposed to help plaintiff with his medical needs, but did not work
3 sufficiently to solve his problems. Plaintiff alleges that defendant Bautista, a physician assistant,
4 examined plaintiff after a blackout but failed to prevent more blackout spells. Plaintiff has failed
5 to set forth sufficient facts regarding these defendants and any Eighth Amendment violation.
6 Plaintiff also accuses Warden Ives of denying plaintiff's administrative remedies. Claims against
7 these defendants are dismissed with leave to amend to file a second amended complaint within
8 twenty-eight days of service of this order.

9 In order to state a claim for violation of the Eighth Amendment based on
10 inadequate medical care, plaintiff must allege "acts or omissions sufficiently harmful to evidence
11 deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976).
12 To prevail, plaintiff must show both that his medical needs were objectively serious, and that
13 defendants possessed a sufficiently culpable state of mind. Wilson v. Seiter, 501 U.S. 294, 299,
14 (1991); McKinney v. Anderson, 959 F.2d 853 (9th Cir. 1992) (on remand). The requisite state of
15 mind for a medical claim is "deliberate indifference." Hudson v. McMillian, 503 U.S. 1, 4
16 (1992).

17 A serious medical need exists if the failure to treat a prisoner's condition could
18 result in further significant injury or the unnecessary and wanton infliction of pain. Indications
19 that a prisoner has a serious need for medical treatment are the following: the existence of an
20 injury that a reasonable doctor or patient would find important and worthy of comment or
21 treatment; the presence of a medical condition that significantly affects an individual's daily
22 activities; or the existence of chronic and substantial pain. See, e.g., Wood v. Housewright, 900
23 F. 2d 1332, 1337-41 (9th Cir. 1990) (citing cases); Hunt v. Dental Dept., 865 F.2d 198, 200-01
24 (9th Cir. 1989). McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992), overruled on other
25 grounds, WMX Technologies v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc).

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1 In Farmer v. Brennan, 511 U.S. 825 (1994) the Supreme Court defined a very
2 strict standard which a plaintiff must meet in order to establish “deliberate indifference.” Of
3 course, negligence is insufficient. Farmer, 511 U.S. at 835. However, even civil recklessness
4 (failure to act in the face of an unjustifiably high risk of harm which is so obvious that it should
5 be known) is insufficient. Id. at 836-37. Neither is it sufficient that a reasonable person would
6 have known of the risk or that a defendant should have known of the risk. Id. at 842.

7 It is nothing less than recklessness in the criminal sense-subjective
8 standard-disregard of a risk of harm of which the actor is actually aware. Id. at 838-842. “[T]he
9 official must both be aware of facts from which the inference could be drawn that a substantial
10 risk of serious harm exists, and he must also draw the inference.” Id. at 837. Thus, a defendant
11 is liable if he knows that plaintiff faces “a substantial risk of serious harm and disregards that risk
12 by failing to take reasonable measures to abate it.” Id. at 847. “[I]t is enough that the official
13 acted or failed to act despite his knowledge of a substantial risk of serious harm.” Id. at 842. If
14 the risk was obvious, the trier of fact may infer that a defendant knew of the risk. Id. at 840-42.
15 However, obviousness per se will not impart knowledge as a matter of law.

16 Furthermore, prisoners do not have a “separate constitutional entitlement to a
17 specific prison grievance procedure.” Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003),
18 citing Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988). Even the nonexistence of, or the
19 failure of prison officials to properly implement, an administrative appeals process within the
20 prison system does not raise constitutional concerns. Mann v. Adams, 855 F.2d at 640. See also,
21 Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993); Flick v. Alba, 932 F.2d 728 (8th Cir.
22 1991); Azeez v. DeRobertis, 568 F.Supp. 8, 10 (N.D.Ill.1982) (“[A prison] grievance procedure
23 is a procedural right only, it does not confer any substantive right upon the inmates. Hence, it
24 does not give rise to a protected liberty interest requiring the procedural protections envisioned
25 by the fourteenth amendment”). Specifically, a failure to process a grievance does not state a
26 constitutional violation. Buckley, supra.

1 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
2 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
3 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
4 how each named defendant is involved. There can be no liability under unless there is some
5 affirmative link or connection between a defendant's actions and the claimed deprivation. Rizzo
6 v. Goode, 423 U.S. 362, 96 S.Ct. 598 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.
7 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory
8 allegations of official participation in civil rights violations are not sufficient. See Ivey v. Board
9 of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

17 In accordance with the above, IT IS HEREBY ORDERED that:

18 1. Plaintiff's claims against Causey, Bautista and Ives are dismissed for the
19 reasons discussed above, with leave to file a second amended complaint within twenty-eight days
20 from the date of service of this order. Failure to file a second amended complaint will result in a
21 recommendation that these defendants be dismissed from this action.

22 2. Upon filing an amended complaint or expiration of the time allowed therefor,
23 the court will make further orders for service of process upon some or all of the defendants.

24 DATED: August 3, 2010

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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