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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL ODIS JOHNSON,
Plaintiff,
v.
V. M. ALNAGER, et al.,
Defendants.

No. 2:14-cv-0401 MCE CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this action brought pursuant to 42 U.S.C. § 1983. By order filed February 25, 2014, plaintiff’s complaint was dismissed for failure to state a claim. Plaintiff was granted leave to file an amended complaint, which is now before the court.¹ (ECF No. 10.)

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

¹ On February 24, 2014, plaintiff filed a document that appears to consist of additional exhibits to the original complaint filed February 6, 2014. (ECF No. 8.) While this document is labeled “First Amended Complaint” in the docket of this action, it does not constitute a freestanding complaint. Moreover, had it been received in time to be considered along with plaintiff’s complaint for screening purposes, the outcome – dismissal with leave to amend – would have been the same. In the instant order, the court considers the first amended complaint filed on March 21, 2014.

1 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
2 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

3 Having reviewed the amended complaint, the undersigned concludes that it fails to cure
4 the deficiencies of the original complaint as discussed in the screening order of February 25,
5 2014. Insofar as plaintiff alleges that prison officials were deliberately indifferent to plaintiff’s
6 serious medical needs by failing to dispense his pain medication, the allegations are too vague
7 and conclusory to state a cognizable claim. See Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009)
8 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory
9 statements do not suffice.”).

10 Denial or delay of medical care for a prisoner’s serious medical needs may constitute a
11 violation of the prisoner’s Eighth and Fourteenth Amendment rights. Estelle v. Gamble, 429 U.S.
12 97, 104-05 (1976). An individual is liable for such a violation only when the individual is
13 deliberately indifferent to a prisoner’s serious medical needs. Id.; see Jett v. Penner, 439 F.3d
14 1091, 1096 (9th Cir. 2006); Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002); Lopez v.
15 Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000).

16 In the Ninth Circuit, the test for deliberate indifference consists of two parts. Jett, 439
17 F.3d at 1096, citing McGuckin v. Smith, 974 F.2d 1050 (9th Cir. 1991), overruled on other
18 grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc). First, the
19 plaintiff must show a “serious medical need” by demonstrating that “failure to treat a prisoner’s
20 condition could result in further significant injury or the ‘unnecessary and wanton infliction of
21 pain.’” Id., citing Estelle, 429 U.S. at 104. “Examples of serious medical needs include ‘[t]he
22 existence of an injury that a reasonable doctor or patient would find important and worthy of
23 comment or treatment; the presence of a medical condition that significantly affects an
24 individual’s daily activities; or the existence of chronic and substantial pain.’” Lopez, 203 F. 3d
25 at 1131-1132, citing McGuckin, 974 F.2d at 1059-60.

26 Second, the plaintiff must show the defendant’s response to the need was deliberately
27 indifferent. Jett, 439 F.3d at 1096. This second prong is satisfied by showing (a) a purposeful act
28 or failure to respond to a prisoner’s pain or possible medical need and (b) harm caused by the

1 indifference. Id. Under this standard, the prison official must not only “be aware of facts from
2 which the inference could be drawn that a substantial risk of serious harm exists,” but that person
3 “must also draw the inference.” Farmer v. Brennan, 511 U.S. 825, 837 (1994). This “subjective
4 approach” focuses only “on what a defendant’s mental attitude actually was.” Id. at 839. A
5 showing of merely negligent medical care is not enough to establish a constitutional violation.
6 Frost v. Agnos, 152 F.3d 1124, 1130 (9th Cir. 1998), citing Estelle, 429 U.S. at 105-106. A
7 difference of opinion about the proper course of treatment is not deliberate indifference, nor does
8 a dispute between a prisoner and prison officials over the necessity for or extent of medical
9 treatment amount to a constitutional violation. See, e.g., Toguchi v. Chung, 391 F.3d 1051, 1058
10 (9th Cir. 2004); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989).

11 Under this standard, plaintiff has failed to state a medical indifference claim against any
12 defendant. Plaintiff will be granted one final opportunity to amend the complaint so as to state a
13 cognizable claim.

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

21 Accordingly, IT IS HEREBY ORDERED THAT:

22 1. Plaintiff’s first amended complaint (ECF No. 10) is dismissed; and

23 2. Plaintiff is granted thirty days from the date of service of this order to file a second
24 amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules
25 of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the docket
26 number assigned this case and must be labeled “Second Amended Complaint”; plaintiff must file

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1 an original and two copies of the second amended complaint; failure to file a second amended
2 complaint in accordance with this order will result in a recommendation that this action be
3 dismissed.

4 Dated: April 7, 2014



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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