

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONNEL BOYCE,  
Plaintiff,  
v.  
MICHAEL FOX, et al.,  
Defendants.

No. 2:14-cv-1743 KJN P

ORDER

Plaintiff is a state prisoner proceeding without counsel. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account.

1 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time  
2 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.  
3 § 1915(b)(2).

4 The court is required to screen complaints brought by prisoners seeking relief against a  
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
6 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
7 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek  
8 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

9 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
11 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an  
12 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
13 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
14 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
15 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.  
16 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
17 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at  
18 1227.

19 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain  
20 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the  
21 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic  
22 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
23 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a  
24 formulaic recitation of the elements of a cause of action;" it must contain factual allegations  
25 sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550 U.S. at 555.  
26 However, "[s]pecific facts are not necessary; the statement [of facts] need only 'give the  
27 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Erickson v.  
28 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal

1 quotations marks omitted). In reviewing a complaint under this standard, the court must accept as  
2 true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the  
3 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236  
4 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

5 In his complaint, plaintiff alleges that while he was housed at Deuel Vocational Institution  
6 (“DVI”), he went “man down” on or about January 17, 2012, stricken with “excruciating” back  
7 pain. Defendant Ogbodo responded, and plaintiff was provided with a hydrocortisone shot but  
8 remained mobility impaired. Plaintiff alleges the pain returned after about eleven hours; he put in  
9 sick call slips and was given two more shots and told he would see the doctor. However, since  
10 the shots, plaintiff claims he was not seen by a doctor and did not receive any pain medication for  
11 about 34 days. On February 20, 2012, plaintiff submitted a 602 grievance, Log No. DVI MC  
12 12040144, asking to be seen by a doctor and to be referred to a specialist to determine his  
13 ailment. On March 6, 2012, plaintiff was seen by defendant Wong concerning plaintiff’s lower  
14 back, but Wong concluded that plaintiff’s lumbar spine was within normal limits, and plaintiff’s  
15 request to be seen by a specialist and for therapy was denied. Plaintiff was prescribed Ibuprofen.

16 On March 30, 2012, defendant Fox responded to plaintiff’s 602 grievance, denying  
17 plaintiff’s request to be seen by a specialist regarding plaintiff’s lower back pain. After being  
18 seen by defendant Ogbodo, who determined she observed plaintiff to be alert, oriented, and in no  
19 acute distress, and informed plaintiff he would be seen by defendant Wong, plaintiff filed a  
20 second appeal, Log No. DVI MC 12040415, on May 1, 2012, alleging improper medical  
21 care/treatment for his serious medical condition. On May 15, 2012, plaintiff was seen by  
22 defendant Wong, who documented that plaintiff was observed walking around and maneuvering  
23 with no difficulty, and that the x-rays of plaintiff’s hip and lumbar spine were within normal  
24 limits.

25 On May 16, 2012, plaintiff was transferred to Salinas Valley State Prison. On May 24,  
26 2014, plaintiff again went “man down,” experiencing five days of lower back extremity paralysis,  
27 loss of sensation from the waist down, along with urinary and fecal incontinence. On May 30,  
28 2012, plaintiff was hospitalized, and an MRI of his lumbar spine showed a large epidural mass at

1 the L5-S1 level, with significant bone destruction; plaintiff was also diagnosed with Valley Fever.

2 “[D]eliberate indifference to serious medical needs of prisoners constitutes the  
3 unnecessary and wanton infliction of pain, proscribed by the Eighth Amendment.” Estelle v.  
4 Gamble, 429 U.S. 97, 104-05 (1976) (internal citations, punctuation and quotation marks  
5 omitted). Plaintiff must show “deliberate indifference” to his “serious medical needs,” id. at 104,  
6 which includes “both an objective standard -- that the deprivation was serious enough to  
7 constitute cruel and unusual punishment -- and a subjective standard -- deliberate indifference.”  
8 Snow v. McDaniel, 681 F.3d 978, 982 (9th Cir. 2012), overruled in part on other grounds by  
9 Peralta v. Dillard, 744 F.3d 1076 (9th Cir. 2014) (en banc).

10 To meet the objective element, plaintiff must demonstrate the existence of a serious  
11 medical need. Estelle, 429 U.S. at 104. Such need exists if the failure to treat the injury or  
12 condition “could result in further significant injury” or cause “the unnecessary and wanton  
13 infliction of pain.” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (internal quotes and  
14 citations omitted). Serious medical needs include “[t]he existence of an injury that a reasonable  
15 doctor or patient would find important and worthy of comment or treatment; the presence of a  
16 medical condition that significantly affects an individual’s daily activities; [and] the existence of  
17 chronic and substantial pain.” McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992),  
18 overruled in part on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997).

19 Under the subjective element, a prison official is deliberately indifferent only if the  
20 official “knows of and disregards an excessive risk to inmate health and safety.” Toguchi v.  
21 Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) (internal quotes and citation omitted). To prevail on  
22 a claim for deliberate indifference, a prisoner must demonstrate that the prison official “kn[ew] of  
23 and disregard[ed] an excessive risk to inmate health or safety; the official must both be aware of  
24 the facts from which the inference could be drawn that a substantial risk of serious harm exists,  
25 and he must also draw the inference.” Farmer v. Brennan, 511 U.S. 825, 837 (1994). Deliberate  
26 indifference “may appear when prison officials deny, delay or intentionally interfere with medical  
27 treatment, or it may be shown by the way in which prison physicians provide medical care.”  
28 Hutchinson v. United States, 838 F.2d 390, 394 (9th Cir. 1988). The court “need not defer to the

1 judgment of prison doctors or administrators” when deciding the deliberate indifference element.  
2 Hunt v. Dental Dept., 865 F.2d 198, 200 (9th Cir. 1989).

3 In applying this standard, the Ninth Circuit has held that before it can be said that a  
4 prisoner’s civil rights have been abridged, “the indifference to his medical needs must be  
5 substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this  
6 cause of action.” Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980) (citing  
7 Estelle, 429 U.S. at 105-06.) A complaint that a physician has been negligent in diagnosing or  
8 treating a medical condition does not state a valid claim of medical mistreatment under the Eighth  
9 Amendment. Even gross negligence is insufficient to establish deliberate indifference to serious  
10 medical needs. See Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990). A difference of  
11 opinion between medical professionals concerning the appropriate course of treatment generally  
12 does not amount to deliberate indifference to serious medical needs. Toguchi, 391 F.3d at 1058;  
13 Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). Also, “a difference of opinion between a  
14 prisoner-patient and prison medical authorities regarding treatment does not give rise to a [§ ]1983  
15 claim.” Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981). To establish that such a  
16 difference of opinion amounted to deliberate indifference, the prisoner “must show that the course  
17 of treatment the doctors chose was medically unacceptable under the circumstances” and “that  
18 they chose this course in conscious disregard of an excessive risk to [the prisoner’s] health.” See  
19 Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996); see also Wilhelm v. Rotman, 680 F.3d  
20 1113, 1123 (9th Cir. 2012) (doctor’s awareness of need for treatment followed by his unnecessary  
21 delay in implementing the prescribed treatment sufficient to plead deliberate indifference); see  
22 also Snow, 681 F.3d at 988 (decision of non-treating, non-specialist physicians to repeatedly deny  
23 recommended surgical treatment may be medically unacceptable under all the circumstances.)

24 Here, plaintiff alleges no facts demonstrating that each defendant was aware that plaintiff  
25 needed to be seen by a specialist or to receive a particular therapy, yet failed to address such  
26 needs. Moreover, as set forth above, the misdiagnoses of a medical condition, without more, is  
27 insufficient to rise to the level of a civil rights violation. The facts as alleged by plaintiff reflect  
28 he was seen on several occasions by medical personnel who provided him with shots to alleviate

1 his pain, and took x-rays in an effort to ascertain the etiology of his back pain. It is unclear that  
2 the x-ray would have shown the epidural mass later diagnosed by an MRI. Plaintiff fails to allege  
3 facts demonstrating that the named defendants were aware that plaintiff was suffering from a  
4 medical condition that required an MRI.

5 Moreover, plaintiff names some defendants based solely on their role in addressing  
6 plaintiff's administrative appeals or grievances. However, prisoners have no stand-alone due  
7 process rights related to the administrative grievance process. See Mann v. Adams, 855 F.2d 639,  
8 640 (9th Cir. 1988); see also Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (holding that  
9 there is no liberty interest entitling inmates to a specific grievance process). Put another way,  
10 prison officials are not required under federal law to process inmate grievances in a specific way  
11 or to respond to them in a favorable manner. Because there is no right to any particular grievance  
12 process, plaintiff cannot state a cognizable civil rights claim for a violation of his due process  
13 rights based on allegations that prison officials ignored or failed to properly process grievances.  
14 See e.g., Wright v. Shannon, 2010 WL 445203 at \*5 (E.D. Cal. Feb.2, 2010) (plaintiff's  
15 allegations that prison officials denied or ignored his inmate appeals failed to state a cognizable  
16 claim under the First Amendment); Williams v. Cate, 2009 WL 3789597 at \*6 (E.D. Cal. Nov.10,  
17 2009) ("Plaintiff has no protected liberty interest in the vindication of his administrative  
18 claims.").

19 The court finds the allegations in plaintiff's complaint so vague and conclusory that it is  
20 unable to determine whether the current action is frivolous or fails to state a claim for relief. The  
21 court has determined that the complaint does not contain a short and plain statement as required  
22 by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a  
23 complaint must give fair notice and state the elements of the claim plainly and succinctly. Jones  
24 v. Cmty. Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least  
25 some degree of particularity overt acts which defendants engaged in that support plaintiff's claim.  
26 Id. Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the  
27 complaint must be dismissed. The court will, however, grant leave to file an amended complaint.

28 ///

1           If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions  
2 about which he complains resulted in a deprivation of plaintiff's constitutional rights. Rizzo v.  
3 Goode, 423 U.S. 362, 371 (1976). Also, the complaint must allege in specific terms how each  
4 named defendant is involved. Id. There can be no liability under 42 U.S.C. § 1983 unless there is  
5 some affirmative link or connection between a defendant's actions and the claimed deprivation.  
6 Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743  
7 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation in civil  
8 rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

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

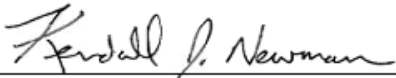
- 18           1. Plaintiff's request for leave to proceed in forma pauperis is granted.
- 19           2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
20 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.  
21 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the  
22 Director of the California Department of Corrections and Rehabilitation filed concurrently  
23 herewith.
- 24           3. Plaintiff's complaint is dismissed.
- 25           4. Within thirty days from the date of this order, plaintiff shall complete the attached  
26 Notice of Amendment and submit the following documents to the court:
  - 27           a. The completed Notice of Amendment; and
  - 28           b. An original and one copy of the Amended Complaint.

1 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the  
2 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must  
3 also bear the docket number assigned to this case and must be labeled "Amended Complaint."  
4 Failure to file an amended complaint in accordance with this order may result in the dismissal of  
5 this action.

6 Dated: December 9, 2014

7

8 /boyc1743.14.new

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONNELL BOYCE,  
Plaintiff,  
v.  
MICHAEL FOX, et al.,  
Defendants.

No. 2:14-cv-1743 KJN P

NOTICE OF AMENDMENT

Plaintiff hereby submits the following document in compliance with the court's order  
filed \_\_\_\_\_.

\_\_\_\_\_ Amended Complaint

DATED:

\_\_\_\_\_  
Plaintiff