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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALONZO JOSEPH,
Plaintiff,
v.
R. HAWKINS, et al.,
Defendants.

No. 2:15-cv-0332 JAM KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel. Defendants removed this action from the Amador County Superior Court, requested the court issue a screening order and grant defendants an extension of time to file a responsive pleading, and paid the filing fee. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). Good cause appearing, defendants’ request for screening order and extension of time is granted. Defendants are relieved of their obligation to file a responsive pleading until further order of court.

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 (9th
3 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when 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7 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
8 2000) (“[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
9 meritless legal theories or whose factual contentions are clearly baseless.”); Franklin, 745 F.2d at
10 1227.

11 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and plain
12 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
13 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic
14 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
15 In order to survive dismissal for failure to state a claim, a complaint must contain more than “a
16 formulaic recitation of the elements of a cause of action;” it must contain factual allegations
17 sufficient “to raise a right to relief above the speculative level.” Bell Atlantic, 550 U.S. at 555.
18 However, “[s]pecific facts are not necessary; the statement [of facts] need only ‘give the
19 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Erickson v.
20 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal
21 quotations marks omitted). In reviewing a complaint under this standard, the court must accept as
22 true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the
23 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236
24 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

25 Here, plaintiff alleges, in general terms, that defendants were deliberately indifferent to his
26 serious medical needs in violation of the Eighth Amendment and his equal protection rights.
27 However, plaintiff fails to identify his serious medical needs, and fails to set forth specific factual
28 allegations that demonstrate how each named defendant was allegedly deliberately indifferent to

1 plaintiff's serious medical needs. In addition, it appears that defendants Smith and Smiley were
2 named based solely on their supervisory roles at Mule Creek State Prison.

3 The Civil Rights Act under which this action was filed provides as follows:

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

9 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
10 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
11 Monell v. Department of Social Servs., 436 U.S. 658 (1978) ("Congress did not intend § 1983
12 liability to attach where . . . causation [is] absent."); Rizzo v. Goode, 423 U.S. 362 (1976) (no
13 affirmative link between the incidents of police misconduct and the adoption of any plan or policy
14 demonstrating their authorization or approval of such misconduct). "A person 'subjects' another
15 to the deprivation of a constitutional right, within the meaning of § 1983, if he does an
16 affirmative act, participates in another's affirmative acts or omits to perform an act which he is
17 legally required to do that causes the deprivation of which complaint is made." Johnson v. Duffy,
18 588 F.2d 740, 743 (9th Cir. 1978).

19 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of
20 their employees under a theory of respondeat superior and, therefore, when a named defendant
21 holds a supervisory position, the causal link between him and the claimed constitutional
22 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979)
23 (no liability where there is no allegation of personal participation); Mosher v. Saalfeld, 589 F.2d
24 438, 441 (9th Cir. 1978) (no liability where there is no evidence of personal participation), cert.
25 denied, 442 U.S. 941 (1979). Vague and conclusory allegations concerning the involvement of
26 official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673
27 F.2d 266, 268 (9th Cir. 1982) (complaint devoid of specific factual allegations of personal
28 participation is insufficient).

While the Eighth Amendment of the United States Constitution entitles plaintiff to
medical care, the Eighth Amendment is violated only when a prison official acts with deliberate

1 indifference to an inmate's serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th
2 Cir. 2012), overruled in part on other grounds, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th
3 Cir. 2014); Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Jett v. Penner, 439 F.3d
4 1091, 1096 (9th Cir. 2006). Plaintiff "must show (1) a serious medical need by demonstrating
5 that failure to treat [his] condition could result in further significant injury or the unnecessary and
6 wanton infliction of pain," and (2) that "the defendant's response to the need was deliberately
7 indifferent." Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d at 1096). Deliberate indifference is
8 shown by "(a) a purposeful act or failure to respond to a prisoner's pain or possible medical need,
9 and (b) harm caused by the indifference." Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d at
10 1096). The requisite state of mind is one of subjective recklessness, which entails more than
11 ordinary lack of due care. Snow, 681 F.3d at 985 (citation and quotation marks omitted);
12 Wilhelm, 680 F.3d at 1122. Mere 'indifference,' 'negligence,' or 'medical malpractice' will not
13 support this cause of action." Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir.
14 1980) (citing Estelle, 429 U.S. at 105-06.)

15 The court dismisses plaintiff's complaint, but grants him leave to file an amended
16 complaint. Plaintiff may not rely on exhibits to explain what acts or omissions demonstrate
17 deliberate indifference. Rather, plaintiff must set forth specific facts addressing the elements set
18 forth above. Moreover, as presently pled, plaintiff's allegations as to defendants Smith and
19 Smiley are based on the theory of respondeat superior; that is, that their supervisory roles
20 demonstrate their Eighth Amendment liability. However, as set forth above, plaintiff must
21 demonstrate an actual link or connection between each defendant and the alleged Constitutional
22 violation. Allegations based solely on a theory of respondeat superior are insufficient to state a
23 cognizable civil rights claim.

24 It is unclear whether plaintiff attempts to raise claims based on defendants' role in the
25 administrative grievance process. However, plaintiff is cautioned that prisoners have no stand-
26 alone due process rights related to the administrative grievance process. See Mann v. Adams,
27 855 F.2d 639, 640 (9th Cir. 1988); see also Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003)
28 (holding that there is no liberty interest entitling inmates to a specific grievance process). Put

1 another way, prison officials are not required under federal law to process inmate grievances in a
2 specific way or to respond to them in a favorable manner. Because there is no right to any
3 particular grievance process, plaintiff cannot state a cognizable civil rights claim for a violation of
4 his due process rights based on allegations that prison officials ignored or failed to properly
5 process grievances. See, e.g. Wright v. Shannon, 2010 WL 445203 at *5 (E.D. Cal. Feb. 2, 2010)
6 (plaintiff's allegations that prison officials denied or ignored his inmate appeals failed to state a
7 cognizable claim under the First Amendment); Towner v. Knowles, 2009 WL 4281999 at *2
8 (E.D. Cal. Nov. 20, 2009) (plaintiff's allegations that prison officials screened out his inmate
9 appeals without any basis failed to indicate a deprivation of federal rights); Williams v. Cate,
10 2009 WL 3789597 at *6 (E.D. Cal. Nov.10, 2009) ("Plaintiff has no protected liberty interest in
11 the vindication of his administrative claims.").

12 Plaintiff also alleges that defendants violated his right to equal protection. However,
13 plaintiff alleges no facts in support of this claim. Equal protection claims arise when a charge is
14 made that similarly situated individuals are treated differently without a rational relationship to a
15 legitimate state purpose. See San Antonio School District v. Rodriguez, 411 U.S. 1 (1972). Here,
16 plaintiff fails to demonstrate that defendants treated him differently on the basis of being a
17 member of a protected class, or that similarly situated individuals were treated differently. Given
18 that plaintiff's claims arise from medical care, it is unlikely that other prisoners are similarly
19 situated to plaintiff.

20 In his state court form, plaintiff also alleges claims for negligence and "intentional torts."
21 Such claims are not cognizable civil rights claims in federal court. Moreover, in both sections,
22 plaintiff relies on the Eighth Amendment and his right to equal protection, and merely alleges
23 "deliberate indifference." Thus, it appears such claims may be subsumed within plaintiff's Eighth
24 Amendment claim.

25 Finally, plaintiff's 56 page filing is not short and plain. Plaintiff is advised that in his
26 amended complaint, he is not required to demonstrate that he has exhausted his administrative
27 remedies, and he is not required to provide exhibits to his complaint. The Clerk of the Court is
28 directed to send plaintiff the form for filing a civil rights complaint.

1 The court finds the allegations in plaintiff's complaint so vague and conclusory that it is
2 unable to determine whether the current action is frivolous or fails to state a claim for relief. The
3 court has determined that the complaint does not contain a short and plain statement as required
4 by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a
5 complaint must give fair notice and state the elements of the claim plainly and succinctly. Jones
6 v. Cmty. Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984).

7 Plaintiff must allege with at least some degree of particularity overt acts which defendants
8 engaged in that support plaintiff's claim. Id. Because plaintiff has failed to comply with the
9 requirements of Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will,
10 however, grant leave to file an amended complaint.

11 Plaintiff is advised that in an amended complaint he must clearly identify each defendant
12 and the action that defendant took that violated his constitutional rights. The court is not required
13 to review exhibits to determine what plaintiff's charging allegations are as to each named
14 defendant. The charging allegations must be set forth in the amended complaint so defendants
15 have fair notice of the claims plaintiff is presenting.

16 Any amended complaint must show the federal court has jurisdiction, the action is brought
17 in the right place, and plaintiff is entitled to relief if plaintiff's allegations are true. It must
18 contain a request for particular relief. Plaintiff must identify as a defendant only persons who
19 personally participated in a substantial way in depriving plaintiff of a federal constitutional right.
20 Duffy, 588 F.2d at 743 (a person subjects another to the deprivation of a constitutional right if he
21 does an act, participates in another's act or omits to perform an act he is legally required to do
22 that causes the alleged deprivation).

23 A district court must construe a pro se pleading "liberally" to determine if it states a claim
24 and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an
25 opportunity to cure them. See Lopez, 203 F.3d at 1130-31. While detailed factual allegations are
26 not required, "[t]hreadbare recitals of the elements of a cause of action, supported by mere
27 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. at 678 (2009) (citing Bell
28 Atlantic Corp., 550 U.S. at 555). Plaintiff must set forth "sufficient factual matter, accepted as

1 true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft, 556 U.S. at 678 (quoting
2 Bell Atlantic Corp., 550 U.S. at 570).

3 A claim has facial plausibility when the plaintiff pleads factual
4 content that allows the court to draw the reasonable inference that
5 the defendant is liable for the misconduct alleged. The plausibility
6 standard is not akin to a “probability requirement,” but it asks for
7 more than a sheer possibility that a defendant has acted unlawfully.
Where a complaint pleads facts that are merely consistent with a
defendant’s liability, it stops short of the line between possibility
and plausibility of entitlement to relief.

8 Ashcroft, 556 U.S. at 678 (citations and quotation marks omitted). Although legal conclusions
9 can provide the framework of a complaint, they must be supported by factual allegations, and are
10 not entitled to the assumption of truth. Id. at 1950.

11 An amended complaint must be complete in itself without reference to any prior pleading.
12 Local Rule 15-220; see Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an
13 amended complaint, the original pleading is superseded.

14 The parties are advised that the previously-submitted exhibits appended to plaintiff’s state
15 court complaint remain a part of the court record and may be referred to by any party. Plaintiff
16 need file no further exhibits until he is required to submit evidence in support of a dispositive
17 motion, at trial, or upon further order of court.

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

19 1. Defendants’ request for screening order and extension of time (ECF No. 3) is granted.
20 Defendants are relieved of their obligation to file a responsive pleading until further order of
21 court.

22 2. Plaintiff’s complaint is dismissed.

23 3. Within thirty days from the date of this order, plaintiff shall complete the attached
24 Notice of Amendment and submit the following documents to the court:

25 a. The completed Notice of Amendment; and

26 b. An original and one copy of the Amended Complaint.

27 Plaintiff’s amended complaint shall comply with the requirements of the Civil Rights Act, the
28 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must

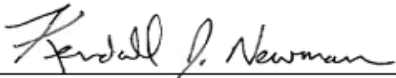
1 also bear the docket number assigned to this case and must be labeled "Amended Complaint."
2 Failure to file an amended complaint in accordance with this order may result in the dismissal of
3 this action.

4 4. The Clerk of the Court is directed to send plaintiff the form for filing a civil rights
5 complaint by a prisoner.

6 Dated: April 10, 2015

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALONZO JOSEPH,
Plaintiff,
v.
R. HAWKINS, et al.,
Defendants.

No. 2:15-cv-0332 JAM KJN P

NOTICE OF AMENDMENT

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

DATED: _____ Amended Complaint

Plaintiff