

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MILTON D. HARRIS,
Plaintiff,
v.
PAUL OSTERLIE, JR. et al.,
Defendants.
No. 2:15-cv-1041 KJN P (TEMP)
ORDER

Plaintiff is a state prisoner, proceeding pro se. 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 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. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §
2 1915(b)(2).

3 **SCREENING REQUIREMENT**

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

10 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
11 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
12 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
13 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
14 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
15 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
16 Cir. 1989); Franklin, 745 F.2d at 1227.

17 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain
18 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
19 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
20 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
21 However, in order to survive dismissal for failure to state a claim a complaint must contain more
22 than "a formulaic recitation of the elements of a cause of action;" it must contain factual
23 allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550
24 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the
25 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.
26 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all
27 doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

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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'S COMPLAINT

20 In his complaint, plaintiff has identified Paul Osterlie, Jr. and Karen Todd as the
21 defendants in this action. Plaintiff alleges that he was working in the Prison Industrial Meat
22 Factory at Mule Creek State Prison under the supervision of defendant Osterlie when he injured
23 his back. According to plaintiff, when his back pain became unbearable, he went to the medical
24 clinic and saw defendant Todd. Plaintiff alleges that she did nothing for him and sent him back to
25 his work assignment. Plaintiff alleges that defendant Osterlie gave him a less strenuous work
26 assignment, but plaintiff still suffered from back pain. Plaintiff alleges that he went to the clinic
27 again, but defendant Todd only looked at him, slightly touched him, and issued him a weekend
28 lay-in. Defendant Todd did not send him to a specialist for a proper diagnosis. (Compl. at 3-4.)

DISCUSSION

2 The allegations in plaintiff's complaint are so vague and conclusory that the court is
3 unable to determine whether the current action is frivolous or fails to state a claim for relief. The
4 complaint does not contain a short and plain statement as required by Fed. R. Civ. P. 8(a)(2).
5 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice to
6 the defendants and must allege facts that support the elements of the claim plainly and succinctly.
7 Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege
8 with at least some degree of particularity overt acts which defendants engaged in that support his
9 claims. Id. Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P.
10 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file an amended
11 complaint.

If plaintiff chooses to file an amended complaint, he must allege facts demonstrating how the conditions complained of resulted in a deprivation of his federal constitutional or statutory rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The amended complaint must allege in specific terms how each named defendant was involved in the deprivation of plaintiff's rights. 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, 423 U.S. 362; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson, 588 F.2d at 743. Vague and conclusory allegations of official participation in civil rights violations are not sufficient. Ivey, 673 F.2d at 268.

21 If plaintiff elects to proceed in this action by filing an amended complaint, he is advised
22 that to maintain an Eighth Amendment claim based on inadequate medical care, he must allege
23 facts showing defendants acted with deliberate indifference to serious medical needs. See Estelle
24 v. Gamble, 429 U.S. 97 (1976). In the Ninth Circuit, a deliberate indifference claim has two
25 components:

26 First, the plaintiff must show a “serious medical need” by
27 demonstrating that “failure to treat a prisoner’s condition could
28 result in further significant injury or the ‘unnecessary and wanton
infliction of pain.’” Second, the plaintiff must show the
defendant’s response to the need was deliberately indifferent. This

1 second prong – defendant’s response to the need was deliberately
2 indifferent – is satisfied by showing (a) a purposeful act or failure
3 to respond to a prisoner’s pain or possible medical need and (b)
4 harm caused by the indifference. Indifference “may appear when
prison officials deny, delay or intentionally interfere with medical
treatment, or it may be shown by the way in which prison
physicians provide medical care.” (internal citations omitted)

5 Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006). See also Wood v. Housewright, 900 F.2d
6 1332, 1334 (9th Cir. 1990) (“In determining deliberate indifference, we scrutinize the particular
7 facts and look for substantial indifference in the individual case, indicating more than mere
8 negligence or isolated occurrences of neglect.”).

9 Plaintiff is cautioned that, in applying the deliberate indifference standard, the Ninth
10 Circuit has held that before it can be said that a prisoner’s civil rights have been abridged, “the
11 indifference to his medical needs must be substantial. Mere ‘indifference,’ ‘negligence,’ or
12 ‘medical malpractice’ will not support this cause of action.” Broughton v. Cutter Lab., 622 F.2d
13 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105-06). In addition, mere differences of
14 opinion between a prisoner and prison medical staff as to the proper course of treatment for a
15 medical condition do not give rise to a § 1983 claim. See Snow v. McDaniel, 681 F.3d 978, 988
16 (9th Cir. 2012); Toguchi v. Soon Hwang Chung, 391 F.3d 1051, 1058 (9th Cir. 2004); Jackson v.
17 McIntosh, 90 F.3d 330, 332 (9th Cir. 1996); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989);
18 Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981).

19 Finally, delays in providing medical care may manifest deliberate indifference. See
20 Estelle, 429 U.S. at 104-05. To establish a deliberate indifference claim arising from a delay in
21 providing medical care, however, a plaintiff must allege facts showing that the delay was harmful.
22 See Berry v. Bunnell, 39 F.3d 1056, 1057 (9th Cir. 1994); Hunt v. Dental Dep’t, 865 F.2d 198,
23 200 (9th Cir. 1989); Shapley v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir.
24 1985). In this regard, “[a] prisoner need not show his harm was substantial; however, such would
25 provide additional support for the inmate’s claim that the defendant was deliberately indifferent to
26 his needs.” Jett, 439 F.3d at 1096.

27 Plaintiff is informed that the court cannot refer to a prior pleading in order to make
28 plaintiff’s amended complaint complete. Local Rule 220 requires that an amended complaint be

1 complete in itself without reference to any prior pleading. This requirement is because, as a
2 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
3 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
4 longer serves any function in the case. Therefore, in an amended complaint, as in an original
5 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

6 **CONCLUSION**

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Plaintiff's application to proceed in forma pauperis (Doc. No. 2) is granted.
- 9 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. The fee
10 shall be collected and paid in accordance with this court's order to the Director of the California
11 Department of Corrections and Rehabilitation filed concurrently herewith.
- 12 3. Plaintiff's complaint is dismissed.
- 13 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
14 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
15 Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number
16 assigned to this case and must be labeled "Amended Complaint"; failure to file an amended
17 complaint in accordance with this order will result in a recommendation that this action be
18 dismissed without prejudice.
- 19 5. The Clerk of the Court is directed to send plaintiff the court's form for filing a civil
20 rights action.

21 Dated: March 17, 2016

22 
23 KENDALL J. NEWMAN
24 UNITED STATES MAGISTRATE JUDGE

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