

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

ROBERT MICHAEL GANGL,
Plaintiff,
v.
SACRAMENTO SHERIFF'S
DEPARTMENT, et al.,
Defendants.

No. 2:17-cv-0186 CKD P

ORDER

I. Introduction

Plaintiff is a county jail inmate proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and plaintiff has consented to have all matters in this action before a United States Magistrate Judge.

Plaintiff requests leave to proceed in forma pauperis. Since plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request 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 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

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

4 II. Screening Standard

5 The court is required to screen complaints brought by prisoners seeking relief against a
6 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
7 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
8 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
9 monetary relief from a defendant who is immune from such relief. 28 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 In order to avoid dismissal for failure to state a claim a complaint must contain more than
18 "naked assertions," "labels and conclusions" or "a formulaic recitation of the elements of a cause
19 of action." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
20 "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
21 statements do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
22 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. "A
23 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
24 the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S.
25 at 678. When considering whether a complaint states a claim upon which relief can be granted,
26 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),
27 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
28 U.S. 232, 236 (1974).

1 III. Discussion

2 Plaintiff alleges that, two weeks before his arrest, he was shot and rendered unable to
3 walk, but jail officials did not provide him a wheelchair as needed. Plaintiff also alleges that he
4 received inadequate medical care in jail, which has resulted in permanent damage to his hip.
5 (ECF No. 1.)

6 The Civil Rights Act under which this action was filed provides:

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

12 42 U.S.C. § 1983.

13 Plaintiff names the Sacramento County Sheriff's Department as a defendant.

14 "Municipalities and other local government units ... [are] among those persons to whom § 1983
15 applies." Monell v. Dept. of Soc. Servs., 436 U.S. at 690. However, a municipal entity or its
16 departments is liable under § 1983 only if plaintiff shows that his constitutional injury was caused
17 by employees acting pursuant to the municipality's policy or custom. See Villegas v. Gilroy
18 Garlic Festival Association, 541 F.3d 950, 964 (9th Cir. 2008) (citing Monell, 436 U.S. at 690–
19 94). "[A]n act performed pursuant to a 'custom' that has not been formally approved by an
20 appropriate decisionmaker may fairly subject a municipality to liability on the theory that the
21 relevant practice is so widespread as to have the force of law." Board of County Comm'rs. of
22 Bryan County v. Brown, 520 U.S. 397, 404 (1997). Plaintiff has not alleged that any employee of
23 the Sheriff's Department acted pursuant to a policy or custom that violates his federal
24 constitutional rights. Thus he does not state a claim as to this defendant.

25 Plaintiff also names Sheriff Scott Jones as a defendant. However, plaintiff's allegations
26 do not show that Jones committed any constitutional violation or caused plaintiff harm. To state a
27 § 1983 claim, a plaintiff must allege facts showing each named defendant either exhibited some
28 sort of "direct personal participation in the deprivation" or "set[] in motion a series of acts by
others which the actor [knew] or reasonably should [have known] would cause others to inflict
the constitutional injury." Johnson v. Duffy, 588 F.2d 740, 743-744 (9th Cir. 1978). There must

1 be an actual causal link between the actions of the named defendants and the alleged
2 constitutional deprivation. See Monell, 436 U.S. at 691–92 (1978). Thus the complaint fails to
3 state a claim against defendant Jones.

4 Denial or delay of medical care for a prisoner’s serious medical needs may constitute a
5 violation of the prisoner’s Eighth and Fourteenth Amendment rights. Estelle v. Gamble, 429 U.S.
6 97, 104-05 (1976). An individual is liable for such a violation only when the individual is
7 deliberately indifferent to a prisoner’s serious medical needs. Id.; see Jett v. Penner, 439 F.3d
8 1091, 1096 (9th Cir. 2006); Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002); Lopez v.
9 Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000).

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

20 Second, the plaintiff must show the defendant’s response to the need was deliberately
21 indifferent. Jett, 439 F.3d at 1096. This second prong is satisfied by showing (a) a purposeful act
22 or failure to respond to a prisoner’s pain or possible medical need and (b) harm caused by the
23 indifference. Id. Under this standard, the prison official must not only “be aware of facts from
24 which the inference could be drawn that a substantial risk of serious harm exists,” but that person
25 “must also draw the inference.” Farmer v. Brennan, 511 U.S. 825, 837 (1994). This “subjective
26 approach” focuses only “on what a defendant’s mental attitude actually was.” Id. at 839. A
27 showing of merely negligent medical care is not enough to establish a constitutional violation.
28 Frost v. Agnos, 152 F.3d 1124, 1130 (9th Cir. 1998), citing Estelle, 429 U.S. at 105-106.

1 Here, the complaint does not specify how any defendant was deliberately indifferent to
2 plaintiff's serious medical needs under the above standard. Plaintiff must allege with at least
3 some degree of particularity overt acts which defendants engaged in that support plaintiff's claim.
4 Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984).

5 For these reasons, plaintiff's complaint must be dismissed. The court will, however, grant
6 leave to file an amended complaint.

7 IV. Leave to Amend

8 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
9 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.
10 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, plaintiff's amended complaint must allege in
11 specific terms how each named defendant is involved. There can be no liability under 42 U.S.C.
12 § 1983 unless there is some affirmative link or connection between a defendant's actions and the
13 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory
14 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
15 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

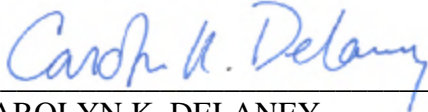
23 In accordance with the above, IT IS HEREBY ORDERED that:

- 24 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.
- 25 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
26 shall be collected and paid in accordance with this court's order to the Sheriff of Sacramento
27 County filed concurrently herewith.
- 28 3. Plaintiff's complaint is dismissed.

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

4. Plaintiff is granted thirty days from the date of service of this order to file an amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number assigned this case and must be labeled "Amended Complaint"; plaintiff must file an original and two copies of the amended complaint; failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

Dated: March 1, 2017



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

2 / gang0186.14.new