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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIE A. NORMAN,
Plaintiff,
v.
NOFSINGER, et al.,
Defendants.

No. 2:17-cv-0998 KJN P

ORDER

Plaintiff is a pretrial detainee housed in the Sacramento County Jail, and is 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 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 to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's 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." Id. at 555. However, "[s]pecific
26 facts are not necessary; the statement [of facts] need only 'give the defendant fair notice of what
27 the . . . claim is and the grounds upon which it rests.'" Erickson v. Pardus, 551 U.S. 89, 93
28 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal quotations marks omitted).

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

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

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

11 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
12 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
13 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
14 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
15 meaning of § 1983, if he does an affirmative act, participates in another’s affirmative acts or
16 omits to perform an act which he is legally required to do that causes the deprivation of which
17 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

18 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of
19 their employees under a theory of respondeat superior and, therefore, when a named defendant
20 holds a supervisory position, the causal link between him and the claimed constitutional
21 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);
22 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). Vague
23 and conclusory allegations concerning the involvement of official personnel in civil rights
24 violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

25 The instant complaint is difficult to parse. Plaintiff raises allegations of excessive force,
26 but recites a litany of unrelated allegations against multiple individuals at the Sacramento County
27 Jail. Despite naming four officers in the defendants’ section of the form, plaintiff included a
28 handwritten list of over 40 individuals on page four, where he also mentions needing x-rays and
MRI’s. Moreover, plaintiff discusses the underlying criminal charges, as well as issues about his
ongoing criminal prosecution, and provides copies of letters to his public defender.

1 First, plaintiff is advised that this court is barred from directly interfering with ongoing
2 criminal proceedings in state court, absent extraordinary circumstances. See Younger v. Harris,
3 401 U.S. 37, 46 (1971); Mann v. Jett, 781 F.2d 1448, 1449 (9th Cir. 1986) (“When a state
4 criminal prosecution has begun the Younger rule directly bars a declaratory judgment action” as
5 well as a section 1983 action for damages “where such an action would have a substantially
6 disruptive effect upon ongoing state criminal proceedings.”). Here, plaintiff has not alleged
7 extraordinary circumstances. Younger, 401 U.S. at 48-50. Plaintiff may raise his constitutional
8 claims in his ongoing criminal proceedings in state court. Lebbos v. Judges of the Superior
9 Court, 883 F.2d 810, 813 (9th Cir. 1989) (“Abstention is appropriate based on ‘interest of comity
10 and federalism [that] counsel federal courts to abstain from jurisdiction whenever federal claims
11 have been or could be presented in ongoing state judicial proceedings that concern important state
12 interests.’”).

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

23 In the event plaintiff chooses to amend, he must file his complaint on the form complaint
24 provided. In an amended complaint, the allegations must be set forth in numbered paragraphs.
25 Fed. R. Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant.
26 Fed. R. Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or
27 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

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1 Unrelated claims against different defendants must be pursued in multiple lawsuits.

2 The controlling principle appears in Fed. R. Civ. P. 18(a): ‘A party
3 asserting a claim . . . may join, [] as independent or as alternate
4 claims, as many claims . . . as the party has against an opposing
5 party.’ Thus multiple claims against a single party are fine, but
6 Claim A against Defendant 1 should not be joined with unrelated
7 Claim B against Defendant 2. Unrelated claims against different
8 defendants belong in different suits, not only to prevent the sort of
morass [a multiple claim, multiple defendant] suit produce[s], but
also to ensure that prisoners pay the required filing fees-for the
Prison Litigation Reform Act limits to 3 the number of frivolous
suits or appeals that any prisoner may file without prepayment of
the required fees. 28 U.S.C. § 1915(g).

9 George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007); see also Fed. R. Civ. P. 20(a)(2) (joinder of
10 defendants not permitted unless both commonality and same transaction requirements are
11 satisfied).

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

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

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1 Plaintiff may join multiple claims if they are all against a single defendant. Fed. R. Civ.
2 P. 18(a).

3 The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d
4 1119, 1125 (9th Cir. 2002) (noting that “nearly all of the circuits have now disapproved any
5 heightened pleading standard in cases other than those governed by Rule 9(b)”); Fed. R. Civ. P.
6 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff’s claims must be
7 set forth in short and plain terms, simply, concisely and directly. See Swierkiewicz v. Sorema
8 N.A., 534 U.S. 506, 514 (2002) (“Rule 8(a) is the starting point of a simplified pleading system,
9 which was adopted to focus litigation on the merits of a claim.”); Fed. R. Civ. P. 8. Plaintiff must
10 not include any preambles, introductions, argument, speeches, explanations, stories, griping,
11 vouching, evidence, attempts to negate possible defenses, summaries, and the like. McHenry v.
12 Renne, 84 F.3d 1172, 1177-78 (9th Cir. 1996) (affirming dismissal of § 1983 complaint for
13 violation of Rule 8 after warning); see Crawford-El v. Britton, 523 U.S. 574, 597 (1998)
14 (reiterating that “firm application of the Federal Rules of Civil Procedure is fully warranted” in
15 prisoner cases). The court (and defendant) should be able to read and understand plaintiff’s
16 pleading within minutes. McHenry, 84 F.3d at 1179-80. A long, rambling pleading including
17 many defendants with unexplained, tenuous or implausible connection to the alleged
18 constitutional injury, or joining a series of unrelated claims against many defendants, very likely
19 will result in delaying the review required by 28 U.S.C. § 1915 and an order dismissing plaintiff’s
20 action pursuant to Fed. R. Civ. P. 41 for violation of these instructions.

21 Plaintiff may not bring a § 1983 action until he has exhausted such administrative
22 remedies as are available to him. 42 U.S.C. § 1997e(a). The Prison Litigation Reform Act
23 (“PLRA”) requires plaintiff to exhaust whatever administrative remedies are available to him
24 prior to filing a complaint in federal court. Such requirement is mandatory. Porter v. Nussle, 534
25 U.S. 516, 524 (2002). Exhaustion is a prerequisite for all prisoner suits regarding conditions of
26 confinement, whether they involve general circumstances or particular episodes, and whether they
27 allege excessive force or some other wrong. Porter, 534 U.S. at 532.

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1 Finally, plaintiff is provided the following standards to assist him in drafting any amended
2 complaint.

3 Legal Standards: Excessive Force

4 Whether a claim of the excessive use of force by law enforcement officers is brought
5 pursuant to the Eighth Amendment, Fourteenth Amendment or Fourth Amendment depends on
6 plaintiff's status at the time of the alleged use of excessive force.¹ In any amended complaint he
7 elects to file plaintiff is advised to allege facts clarifying his status at the time of the alleged use of
8 excessive force by the named defendants and to provide factual allegations with respect to his
9 specific claims.

10 Under the Eighth Amendment, the unnecessary and wanton infliction of pain constitutes
11 cruel and unusual punishment. See Whitley v. Albers, 475 U.S. 312, 319 (1986); Ingraham v.
12 Wright, 430 U.S. 651, 670 (1977); Estelle v. Gamble, 429 U.S. 97, 105-06 (1976). In order to
13 state a cognizable claim for cruel and unusual punishment, plaintiff must allege facts that if true
14 would satisfy a two-part test containing an objective prong and a subjective prong. First, plaintiff
15 must allege facts showing that, objectively, he suffered a sufficiently serious deprivation. See
16 Wilson v. Seiter, 501 U.S. 294, 298 (1991). Second, plaintiff must allege facts satisfying a
17 subjective inquiry into whether each law enforcement or jail official named had a culpable state
18 of mind in causing or allowing plaintiff's deprivation to occur. See id. at 299. In this regard,
19 mere negligence by a defendant is insufficient to state such a claim. See id. "[W]henver prison
20 officials stand accused of using excessive physical force . . . , the core judicial inquiry is . . .
21 whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously
22 and sadistically to cause harm." Hudson v. McMillian, 503 U.S. 1, 6-7 (1992). See also Whitley,
23 475 U.S. at 320-22.

24
25 ¹ If plaintiff had been arraigned or was in custody following a conviction when he was subjected
26 to excessive force, his civil rights action would be based on the Fourteenth and Eighth
27 Amendments. The legal standards, however, are the same under both constitutional amendments.
28 See Young v. Wolfe, 478 Fed. Appx. 354, 356 (9th Cir. 2012) ("A pretrial post-arraignment
detainee's rights under the Fourteenth Amendment are comparable to a prisoner's rights under the
Eighth Amendment, Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998), so, post-arraignment,
the Eighth Amendment "malicious and sadistic" standard applies.")

1 When a plaintiff alleges excessive force during an arrest, the federal right implicated is the
2 Fourth Amendment right against unreasonable seizures. Tolan v. Cotton, 134 S. Ct. 1861, 1865
3 (2014). The amount of force used violates the Fourth Amendment if the force was excessive as
4 measured by objective standards of reasonableness. Wilkins v. City of Oakland, 350 F.3d 949,
5 954 (9th Cir. 2003). In order to determine whether the amount of force used was reasonable, the
6 court considers the nature and quality of force used against the countervailing government
7 interests at stake. Green v. City & Cnty. of S.F., 751 F.3d 1039, 1049 (9th Cir. 2014).

8 Legal Standards: Inadequate Medical Care

9 “[T]he ‘deliberate indifference’ standard applies to claims that correction facility officials
10 failed to address the medical needs of pretrial detainees.” Clouthier v. County of Contra Costa,
11 591 F.3d 1232, 1242 (9th Cir. 2010). See also Simmons v. Navajo County, 609 F.3d 1011, 1017
12 (9th Cir. 2010) (“Although the Fourteenth Amendment’s Due Process Clause, rather than the
13 Eighth Amendment’s protection against cruel and unusual punishment, applies to pretrial
14 detainees, we apply the same standards in both cases.”) (internal citations omitted).

15 Deliberate indifference is “a state of mind more blameworthy than negligence” and
16 “requires ‘more than ordinary lack of due care for the prisoner’s interests or safety.’” Farmer,
17 511 U.S. at 835. Under the deliberate indifference standard, a person may be found liable for
18 denying adequate medical care if he “knows of and disregards an excessive risk to inmate health
19 and safety.” Id. at 837. See also Estelle v. Gamble, 429 U.S. 97, 106 (1976); Lolli v. County of
20 Orange, 351 F.3d 410, 418-19 (9th Cir. 2003); Doty v. County of Lassen, 37 F.3d 540, 546 (9th
21 Cir. 1994). A deliberate indifference claim predicated upon the failure to provide medical
22 treatment has two elements:

23 First, the plaintiff must show a “serious medical need” by
24 demonstrating that “failure to treat a prisoner’s condition could
25 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.

26 Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006). See also McGuckin v. Smith, 974 F.2d 1050,
27 1059 (9th Cir. 1991) (an Eighth Amendment medical claim has two elements: “the seriousness of
28 the prisoner’s medical need and the nature of the defendant’s response to that need.”), overruled

1 on other grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (*en banc*).

2 Legal Standards: Harassment

3 Allegations of harassment, embarrassment, and defamation are not cognizable under
4 section 1983. *Rutledge v. Arizona Bd. of Regents*, 660 F.2d 1345, 1353 (9th Cir. 1981), *aff'd sub*
5 *nom. Kush v. Rutledge*, 460 U.S. 719 (1983); *see also Franklin v. Oregon*, 662 F.2d 1337, 1344
6 (9th Cir. 1982) (allegations of harassment with regards to medical problems not cognizable);
7 *Ellingburg v. Lucas*, 518 F.2d 1196, 1197 (8th Cir. 1975) (Arkansas state prisoner does not have
8 cause of action under § 1983 for being called obscene name by prison employee); *Batton v. North*
9 *Carolina*, 501 F.Supp. 1173, 1180 (E.D. N.C. 1980) (mere verbal abuse by prison officials does
10 not state claim under § 1983). Nor are allegations of mere threats cognizable. *See Gaut v. Sunn*,
11 810 F.2d 923, 925 (9th Cir. 1987) (mere threat does not constitute constitutional wrong, nor do
12 allegations that naked threat was for purpose of denying access to courts compel contrary result).

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

14 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

15 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
16 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
17 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
18 Sacramento County Sheriff filed concurrently herewith.

19 3. Plaintiff's complaint is dismissed.

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

22 a. The completed Notice of Amendment; and

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

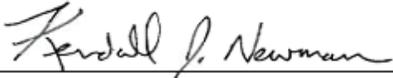
24 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
25 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must
26 also bear the docket number assigned to this case and must be labeled "Amended Complaint."

27 Failure to file an amended complaint in accordance with this order may result in the
28 dismissal of this action.

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5. The Clerk of the Court shall send plaintiff the form for filing a civil rights action by a prisoner.

Dated: May 17, 2017


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIE A. NORMAN,
Plaintiff,
v.
NOFSINGER, et al.,
Defendants.

No. 2:17-cv-0998 KJN P

NOTICE OF AMENDMENT

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

DATED: _____ Amended Complaint

Plaintiff