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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT PENALOZA,
Plaintiff,
v.
SALAHUDDIN ABDUR-RAHMAN, et
al.,
Defendants.

No. 2:17-cv-1015 DB P

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 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 **I. Screening Requirement**

5 The in forma pauperis statute provides, "Notwithstanding any filing fee, or any portion
6 thereof, that may have been paid, the court shall dismiss the case at any time if the court
7 determines that . . . the action or appeal . . . fails to state a claim upon which relief may be
8 granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

9 **II. Pleading Standard**

10 Section 1983 "provides a cause of action for the deprivation of any rights, privileges, or
11 immunities secured by the Constitution and laws of the United States." Wilder v. Virginia Hosp.
12 Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not itself a source of
13 substantive rights, but merely provides a method for vindicating federal rights conferred
14 elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

15 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a
16 right secured by the Constitution or laws of the United States was violated and (2) that the alleged
17 violation was committed by a person acting under the color of state law. See West v. Atkins, 487
18 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987).

19 A complaint must contain "a short and plain statement of the claim showing that the
20 pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
21 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
22 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
23 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth "sufficient factual
24 matter, accepted as true, to state a claim to relief that is plausible on its face." Id. Facial
25 plausibility demands more than the mere possibility that a defendant committed misconduct and,
26 while factual allegations are accepted as true, legal conclusions are not. Id. at 677-78.

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1 **III. Plaintiff's Allegations**

2 At all times relevant to this action, plaintiff was a state inmate housed at High Desert State
3 Prison ("HDSP") in Susanville, California. He names as defendants Dr. Salahuddin Abdur-
4 Rahman and Dr. B. Lee, the Chief Physician and Surgeon at HDSP.

5 Plaintiff's allegations may be fairly summarized as follows:

6 Plaintiff suffers from a medical condition known as "Ulnar Claw." Some of the associated
7 symptoms of this condition include muscle atrophy and pain. Dr. Abdur-Rahman, plaintiff's
8 primary care provider, refused to order an MRI or x-ray, which would have shown the urgent
9 need for surgery. He also failed to prescribe adequate pain medication. When plaintiff filed an
10 inmate grievance concerning this issue, Dr. Lee, one of the reviewers, failed to correct it. Plaintiff
11 claims he suffered unnecessary and excessive pain and suffering as a result of the defendants'
12 conduct. He also suffered permanent muscle atrophy in his hand. Plaintiff seeks damages.

13 **IV. Discussion**

14 **A. Eighth Amendment Medical Indifference**

15 The treatment a prisoner receives in prison and the conditions under which the prisoner is
16 confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel and unusual
17 punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan, 511 U.S. 825,
18 832 (1994). The Eighth Amendment "... embodies broad and idealistic concepts of dignity,
19 civilized standards, humanity, and decency." Estelle v. Gamble, 429 U.S. 97, 102 (1976).

20 A prison official violates the Eighth Amendment only when two requirements are met: (1)
21 objectively, the official's act or omission must be so serious such that it results in the denial of the
22 minimal civilized measure of life's necessities; and (2) subjectively, the prison official must have
23 acted unnecessarily and wantonly for the purpose of inflicting harm. See Farmer, 511 U.S. at 834.
24 Thus, to violate the Eighth Amendment, a prison official must have a "sufficiently culpable
25 mind." See id.

26 A claim of medical indifference requires: 1) a serious medical need, and 2) a deliberately
27 indifferent response by defendant. Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006). A serious
28 medical need may be shown by demonstrating that "failure to treat a prisoner's condition could

1 result in further significant injury or the ‘unnecessary and wanton infliction of pain.’” Id.; see also
2 McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992) (“The existence of an injury that a
3 reasonable doctor or patient would find important and worthy of comment or treatment; the
4 presence of a medical condition that significantly affects an individual's daily activities; or the
5 existence of chronic and substantial pain are examples of indications that a prisoner has a
6 ‘serious’ need for medical treatment.”).

7 The deliberate indifference standard is met by showing: a) a purposeful act or failure to
8 respond to a prisoner’s pain or possible medical need, and b) harm caused by the indifference. Id.
9 “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051, 1060 (9th
10 Cir. 2004). “Under this standard, the prison official must not only ‘be aware of the facts from
11 which the inference could be drawn that a substantial risk of serious harm exists,’ but that person
12 ‘must also draw the inference.’” Id. at 1057 (quoting Farmer, 511 U.S. at 837). “‘If a prison
13 official should have been aware of the risk, but was not, then the official has not violated the
14 Eighth Amendment, no matter how severe the risk.’” Id. (brackets omitted) (quoting Gibson v.
15 Cnty. of Washoe, 290 F.3d 1175, 1188 (9th Cir. 2002)). “[A]n inadvertent failure to provide
16 adequate medical care” does not, by itself, state a deliberate indifference claim for § 1983
17 purposes. McGuckin, 974 F.2d at 1060 (internal quotation marks omitted); See also Estelle, 429
18 U.S. at 106 (“[A] complaint that a physician has been negligent in diagnosing or treating a
19 medical condition does not state a valid claim of medical mistreatment under the Eighth
20 Amendment. Medical malpractice does not become a constitutional violation merely because the
21 victim is a prisoner.”). “A defendant must purposefully ignore or fail to respond to a prisoner's
22 pain or possible medical need in order for deliberate indifference to be established.” McGuckin,
23 974 F.2d at 1060.

24 Plaintiff has adequately alleged that he suffers from a serious medical condition.
25 Plaintiff’s remaining allegations, however, are too bare and conclusory to show deliberate
26 indifference by Dr. Abdur-Rahman. This claim will therefore be dismissed with leave to amend.
27 If plaintiff chooses to amend, he should take care to include specific allegations regarding the
28 nature and circumstances of Dr. Abdur-Rahman’s provision of medical care.

1 **B. Inmate Appeal Process**

2 Plaintiff’s allegations against Dr. Lee are also minimal. He is alleged only to have failed
3 to correct Dr. Abdur-Rahman’s conduct, but since the details of Dr. Abdur-Rahman’s conduct are
4 unclear, plaintiff’s claim against Dr. Lee must also be dismissed with leave to amend.

5 If plaintiff chooses to amend, he is forewarned that generally a defendant’s actions in
6 responding to an inmate appeal, alone, cannot give rise to any claims for relief under section 1983
7 for violation of due process. “[A prison] grievance procedure is a procedural right only, it does
8 not confer any substantive right upon the inmates.” Buckley v. Barlow, 997 F.2d 494, 495 (8th
9 Cir. 1993) (citing Azeez v. DeRobertis, 568 F. Supp. 8, 10 (N.D. Ill. 1982)); see also Ramirez v.
10 Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (no liberty interest in processing of appeals because no
11 entitlement to a specific grievance procedure); Massey v. Helman, 259 F.3d 641, 647 (7th Cir.
12 2001) (existence of grievance procedure confers no liberty interest on prisoner); Mann v. Adams,
13 855 F.2d 639, 640 (9th Cir. 1988). “Hence, it does not give rise to a protected liberty interest
14 requiring the procedural protections envisioned by the Fourteenth Amendment.” Azeez, 568 F.
15 Supp. at 10. Actions in reviewing a prisoner's administrative appeal, without more, are not
16 actionable under section 1983. Buckley, 997 F.2d at 495.

17 Nonetheless, a plaintiff may state a claim against a defendant who had the authority and
18 opportunity to intervene during the inmate appeal process to correct a constitutional violation, but
19 did not do so. Jett v. Penner, 439 F.3d 1091, 1098 (9th Cir. 2006); Grant v. Cate, 2016 WL
20 7116714, at *8 (E.D. Cal. Dec. 7, 2016) (“[A]n individual who denies an inmate appeal and who
21 had the authority and opportunity to prevent an ongoing constitutional violation could potentially
22 be subject to liability if the individual knew about an existing or impending violation and failed to
23 prevent it.”) (citing Jett).

24 The charging allegations must be set forth in the amended complaint so defendant has fair
25 notice of the claims plaintiff is presenting. That said, plaintiff need not provide every detailed
26 fact in support of his claims. Rather, plaintiff should provide a short, plain statement of each
27 claim. See Fed. R. Civ. P. 8(a).

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1 Any amended complaint must show the federal court has jurisdiction, the action is brought in
2 the right place, and plaintiff is entitled to relief if plaintiff's allegations are true. It must contain a
3 request for particular relief. Plaintiff must identify as a defendant only persons who personally
4 participated in a substantial way in depriving plaintiff of a federal constitutional right. Johnson v.
5 Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a
6 constitutional right if he does an act, participates in another's act or omits to perform an act he is
7 legally required to do that causes the alleged deprivation).

8 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed. R.
9 Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant. Fed. R.
10 Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or
11 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

12 The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d
13 1119, 1125 (9th Cir. 2002) (noting that "nearly all of the circuits have now disapproved any
14 heightened pleading standard in cases other than those governed by Rule 9(b)"); Fed. R. Civ. P.
15 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff's claims must be
16 set forth in short and plain terms, simply, concisely and directly. See Swierkiewicz v. Sorema
17 N.A., 534 U.S. 506, 514 (2002) ("Rule 8(a) is the starting point of a simplified pleading system,
18 which was adopted to focus litigation on the merits of a claim."); Fed. R. Civ. P. 8.

19 An amended complaint must be complete in itself without reference to any prior pleading.
20 E.D. Cal. R. 220. Once plaintiff files an amended complaint, the original pleading is superseded.

21 By signing an amended complaint, plaintiff certifies he has made reasonable inquiry and has
22 evidentiary support for his allegations, and for violation of this rule the court may impose
23 sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

24 **V. Conclusion**

25 Based on the foregoing, the undersigned finds that plaintiff's complaint fails to state a
26 claim. Accordingly, IT IS HEREBY ORDERED that:

- 27 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.
- 28 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff

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is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to the Director of the California Department of Corrections and Rehabilitation filed concurrently herewith.

- 3. Plaintiff’s complaint is dismissed.
- 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: June 7, 2017


DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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