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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT TAYLOR,
Plaintiff,
v.
DR. WONG, et al.,
Defendants.

No. 2: 17-cv-1758 MCE KJN 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 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. 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 The court is required to screen complaints brought by prisoners seeking relief against a
4 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
5 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
6 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
7 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

8 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
9 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
10 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
11 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
12 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
13 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
14 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
15 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
16 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at
17 1227.

18 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain
19 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
20 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
21 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
22 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a
23 formulaic recitation of the elements of a cause of action;" it must contain factual allegations
24 sufficient "to raise a right to relief above the speculative level." Id. at 555. However, "[s]pecific
25 facts are not necessary; the statement [of facts] need only 'give the defendant fair notice of what
26 the . . . claim is and the grounds upon which it rests.'" Erickson v. Pardus, 551 U.S. 89, 93
27 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal quotations marks omitted).
28 In reviewing a complaint under this standard, the court must accept as true the allegations of the

1 complaint in question, Erickson, 551 U.S. at 93, and construe the pleading in the light most
2 favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other
3 grounds, Davis v. Scherer, 468 U.S. 183 (1984).

4 Named as defendants are Dr. Wong and Nurse Duncan. Plaintiff alleges that he has taken
5 blood pressure medication since 2009. Plaintiff alleges that on July 26, 2017, defendant Wong
6 failed to renew his blood pressure medication. As a result of not receiving this medication,
7 plaintiff began to experience dizziness, a racing heart, etc. During medication rounds, plaintiff
8 told medical staff that his medication needed to be renewed. These requests were ignored.

9 Plaintiff alleges that on August 13, 2017, he fell down steps as a result of feeling dizzy.
10 Plaintiff seriously injured his shoulder and back. On August 15, 2017, plaintiff began receiving
11 his blood pressure medication. Plaintiff alleges that defendant Wong renewed the prescription
12 only after plaintiff seriously injured himself.

13 Plaintiff alleges that defendants Wong and Duncan were both aware of his serious medical
14 condition and need for blood pressure medication. Plaintiff alleges that both defendants ignored
15 his requests for this medication from July 26, 2017 to August 15, 2017.

16 To succeed on an Eighth Amendment claim predicated on the denial of medical care, a
17 plaintiff must establish that he had a serious medical need and that the defendant's response to
18 that need was deliberately indifferent. Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006); see
19 also Estelle v. Gamble, 429 U.S. 97, 106 (1976). A serious medical need exists if the failure to
20 treat the condition could result in further significant injury or the unnecessary and wanton
21 infliction of pain. Jett, 439 F.3d at 1096. Deliberate indifference may be shown by the denial,
22 delay or intentional interference with medical treatment or by the way in which medical care is
23 provided. Hutchinson v. United States, 838 F.2d 390, 394 (9th Cir. 1988).

24 To act with deliberate indifference, a prison official must both be aware of facts from
25 which the inference could be drawn that a substantial risk of serious harm exists, and he must also
26 draw the inference. Farmer v. Brennan, 511 U.S. 825, 837 (1994). Thus, a defendant is liable if
27 he knows that plaintiff faces "a substantial risk of serious harm and disregards that risk by failing
28 to take reasonable measures to abate it." Id. at 847. A physician need not fail to treat an inmate

1 altogether in order to violate that inmate's Eighth Amendment rights. Ortiz v. City of Imperial,
2 884 F.2d 1312, 1314 (9th Cir. 1989). A failure to competently treat a serious medical condition,
3 even if some treatment is prescribed, may constitute deliberate indifference in a particular case.

4 Id.

5 It is important to differentiate common law negligence claims of malpractice from claims
6 predicated on violations of the Eight Amendment's prohibition of cruel and unusual punishment.
7 In asserting the latter, "[m]ere 'indifference,' 'negligence,' or 'medical malpractice' will not
8 support this cause of action." Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir.
9 1980) (citing Estelle v. Gamble, 429 U.S. 97, 105-106 (1976)); see also Toguchi v. Chung, 391
10 F.3d 1051, 1057 (9th Cir. 2004).

11 For the following reasons, the undersigned finds that plaintiff has not plead sufficient facts
12 supporting a potentially colorable claim that defendants acted with deliberate indifference.
13 Plaintiff does not allege why defendant Wong failed to renew his blood pressure medication on
14 July 26, 2017. Without additional facts regarding why defendant Wong failed to renew the
15 medication, the undersigned cannot determine whether plaintiff has stated a potentially colorable
16 claim for deliberate indifference. It is unclear, for example, whether defendant Wong
17 intentionally chose not to renew the medication, or whether the failure to renew the medication
18 was by mistake. Plaintiff shall clarify this matter in the amended complaint.

19 While plaintiff alleges that both defendants Wong and Duncan ignored his requests for
20 medication from July 26, 2017, to August 15, 2017, he alleges no facts to support this claim. The
21 undersigned cannot find that plaintiff has stated a potentially colorable claim for deliberate
22 indifference based on these vague and conclusory allegations. In the amended complaint,
23 plaintiff shall address when he asked these defendants to renew his blood pressure medication and
24 how they responded to his requests.

25 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
26 about which he complains resulted in a deprivation of plaintiff's constitutional rights. Rizzo v.
27 Goode, 423 U.S. 362, 371 (1976). Also, the complaint must allege in specific terms how each
28 named defendant is involved. Id. There can be no liability under 42 U.S.C. § 1983 unless there is

1 some affirmative link or connection between a defendant's actions and the claimed deprivation.
2 Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743
3 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation in civil
4 rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

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 Director of the California Department of Corrections and Rehabilitation filed concurrently
19 herewith.

20 3. Plaintiff's complaint is dismissed.

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

23 a. The completed Notice of Amendment; and

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

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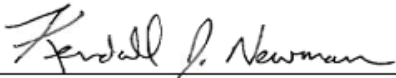
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1 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
2 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must
3 also bear the docket number assigned to this case and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

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

6 Dated: September 28, 2017

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
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NOTICE OF AMENDMENT

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

DATED: _____ Amended Complaint

Plaintiff