

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 LEE TAYLOR,
Plaintiff,
v.
ERIC ARNOLD, et al.,
Defendants.

No. 2:17-cv-2014 KJM CKD P

ORDER

Plaintiff, a California prisoner proceeding in forma pauperis and pro se, seeks 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. See 28 U.S.C. § 636(c).

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

////

1 In order to avoid dismissal for failure to state a claim a complaint must contain more than
2 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
3 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
4 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
5 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
6 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
7 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
8 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
9 at 678. When considering whether a complaint states a claim upon which relief can be granted,
10 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),
11 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
12 U.S. 232, 236 (1974).

13 The court has conducted the required screening and finds that plaintiff may proceed
14 against defendant Dr. Win for cessation of pain medication in 2016, and then again at some point
15 after May of 2017, in violation of the Eighth Amendment. In all other instances, plaintiff’s
16 complaint fails to state a claim upon which relief can be granted as the allegations are too vague.

17 At this point, plaintiff has two options; he may proceed on the claim described above, or
18 he can attempt to cure some or all of the deficiencies in his complaint by submitting an amended
19 complaint. Plaintiff will be granted 30 days within which to submit an amended complaint. If
20 plaintiff does not submit an amended complaint within 30 days, this action will proceed on the
21 claim described above.

22 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
23 complained of have resulted in a deprivation of plaintiff’s constitutional rights. See Ellis v.
24 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must allege in
25 specific terms how each named defendant is involved. There can be no liability under 42 U.S.C.
26 § 1983 unless there is some affirmative link or connection between a defendant’s actions and the
27 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory

28 ////

1 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
2 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

3 In terms of medical care, denial or delay of medical care may constitute a violation of the
4 prisoner's Eighth Amendment right to be free from cruel and unusual punishment. Estelle v.
5 Gamble, 429 U.S. 97, 104-05 (1976). An individual is liable under the Eighth Amendment when
6 they cause injury as a result of at least deliberate indifference to a prisoner's serious medical
7 needs. Id. A showing of merely negligent medical care is not enough to establish a constitutional
8 violation. Frost v. Agnos, 152 F.3d 1124, 1130 (9th Cir. 1998). A difference of opinion about
9 the proper course of treatment is not deliberate indifference, nor does a dispute between a
10 prisoner and prison officials over the necessity for or extent of medical treatment amount to a
11 constitutional violation. See, e.g., Toguchi v. Chung, 391 F.3d 1051, 1058 (9th Cir. 2004). Mere
12 delay of medical treatment, "without more, is insufficient to state a claim of deliberate medical
13 indifference." Shapley v. Nev. Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985).
14 Where a prisoner alleges that delay of medical treatment evinces deliberate indifference, the
15 prisoner must show that the delay caused "significant harm and that Defendants should have
16 known this to be the case." Hallett v. Morgan, 296 F.3d 732, 745-46 (9th Cir. 2002).

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

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

25 1. Plaintiff is granted thirty days to file an amended complaint. The amended complaint
26 must bear the docket number assigned this case and must be labeled "Amended Complaint."

27 ////

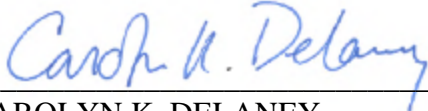
28 ////

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

2. The Clerk of the Court is directed to send plaintiff the court's form for filing a prisoner civil rights action.

3. If plaintiff does not submit an amended complaint within 30 days, the court will recommend that this action proceed on the claim described above against defendant Dr. Win for denial of medical care in violation of the Eighth Amendment. The court will also recommend that all other claims and defendants be dismissed.

Dated: April 19, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

1
tayl2014.14