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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID D. HARRIS,
Plaintiff,
v.
N. MALAKKLA, et al.,
Defendants.

No. 2:17-cv-2040 DB P

ORDER

Plaintiff is state prisoner proceeding pro se with a civil rights action under 42 U.S.C. § 1983. Plaintiff alleges he is not being provided sufficient pain medication in violation of the Eighth Amendment. Plaintiff has consented to the jurisdiction of a magistrate judge. (ECF No. 6.)

Before the court are plaintiff's motion to proceed in forma pauperis, plaintiff's complaint for screening, and plaintiff's motion to amend his complaint. For the reasons set forth below, the court will grant plaintiff's motion to proceed in forma pauperis, finds plaintiff has stated a potentially cognizable claim under § 1983 against only two defendants, grants plaintiff's motion to amend, and gives plaintiff's leave to file an amended complaint.

IN FORMA PAUPERIS

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.

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1 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§
2 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in
3 accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct
4 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and
5 forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments
6 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.
7 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time
8 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §
9 1915(b)(2).

10 SCREENING

11 I. Legal Standards

12 The court is required to screen complaints brought by prisoners seeking relief against a
13 governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. §
14 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims
15 that are legally "frivolous or malicious," that fail to state a claim upon which relief may be
16 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28
17 U.S.C. § 1915A(b)(1) & (2).

18 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
19 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
20 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
21 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
22 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
23 pleaded, has an arguable legal and factual basis. See Franklin, 745 F.2d at 1227.

24 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain
25 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
26 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
27 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
28 However, in order to survive dismissal for failure to state a claim a complaint must contain more

1 than “a formulaic recitation of the elements of a cause of action;” it must contain factual
2 allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic, 550
3 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the
4 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.
5 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all
6 doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

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

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

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

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

27 **II. Allegations of the Complaint**

28 Plaintiff is an incarcerated at the California Health Care Facility. (ECF No. 1.) He identifies
the following defendants: N. Malakkla; K. Yusufzie; J. Halepota; and Anise Adams. Plaintiff
alleges that he suffers pain from a gunshot wound to his elbow. He states that he was prescribed

1 methadone for his pain. However, defendant Dr. Yusufzie replaced that prescription with one for
2 Gabapentin. Plaintiff states that his pain was better controlled by the methadone. Attachments to
3 plaintiff's complaint show that defendant R.N. Halepota interviewed plaintiff about his appeal
4 seeking different pain relief and defendant Dr. Malakkla denied plaintiff's appeal at the second
5 level of review. The court is unable to find any mention of the fourth defendant, Anise Adams.

6 Plaintiff seeks an injunction requiring defendants to provide more effective pain medication in
7 the form of methadone. He also seeks compensatory and punitive damages.

8 **III. Does Plaintiff State Cognizable Claims?**

9 Plaintiff alleges claims under both the Eighth Amendment and under the Equal Protection
10 Clause. He states that his allegations are the same for each claim. The Equal Protection Clause
11 requires that persons who are similarly situated be treated alike. City of Cleburne v. Cleburne
12 Living Center, Inc., 473 U.S. 432, 439 (1985); Hartmann v. Calif. Dept. of Corrs. and Rehab.,
13 707 F.3d 1114, 1123 (9th Cir. 2013); Furnace v. Sullivan, 705 F.3d 1021, 1030 (9th Cir. 2013);
14 Shakur v. Schriro, 514 F.3d 878, 891 (9th Cir. 2008). An equal protection claim may be
15 established by showing that defendants intentionally discriminated against plaintiff based on his
16 membership in a protected class, Hartmann, 707 F.3d at 1123, or that similarly situated
17 individuals were intentionally treated differently without a rational relationship to a legitimate
18 state purpose, Engquist v. Oregon Dept. of Agriculture, 553 U.S. 591, 601–02 (2008). Plaintiff
19 does not allege any discrimination based on his membership in a protected class. Plaintiff's equal
20 protection claim will be dismissed. Plaintiff's Eighth Amendment claim is addressed below.

21 **A. Legal Standards for Eighth Amendment Claim**

22 The Eighth Amendment prohibits the infliction of "cruel and unusual punishments." U.S.
23 Const. amend. VIII. The unnecessary and wanton infliction of pain constitutes cruel and unusual
24 punishment prohibited by the Eighth Amendment. Whitley v. Albers, 475 U.S. 312, 319 (1986);
25 Ingraham v. Wright, 430 U.S. 651, 670 (1977); Estelle v. Gamble, 429 U.S. 97, 105-06 (1976).
26 Neither accident nor negligence constitutes cruel and unusual punishment, as "[i]t is obduracy
27 and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited
28 by the Cruel and Unusual Punishments Clause." Whitley, 475 U.S. at 319.

1 What is needed to show unnecessary and wanton infliction of pain “varies according to the
2 nature of the alleged constitutional violation.” Hudson v. McMillian, 503 U.S. 1, 5 (1992) (citing
3 Whitley, 475 U.S. at 320). In order to prevail on a claim of cruel and unusual punishment,
4 however, a prisoner must allege and prove that objectively he suffered a sufficiently serious
5 deprivation and that subjectively prison officials acted with deliberate indifference in allowing or
6 causing the deprivation to occur. Wilson v. Seiter, 501 U.S. 294, 298-99 (1991).

7 If a prisoner's Eighth Amendment claim arises in the context of medical care, the prisoner
8 must allege and prove “acts or omissions sufficiently harmful to evidence deliberate indifference
9 to serious medical needs.” Estelle, 429 U.S. at 106. An Eighth Amendment medical claim has
10 two elements: “the seriousness of the prisoner's medical need and the nature of the defendant's
11 response to that need.” McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on
12 other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc).

13 A medical need is serious “if the failure to treat the prisoner's condition could result in
14 further significant injury or the ‘unnecessary and wanton infliction of pain.’” McGuckin, 974
15 F.2d at 1059 (quoting Estelle, 429 U.S. at 104). Indications of a serious medical need include
16 “the presence of a medical condition that significantly affects an individual's daily activities.” Id.
17 at 1059-60. By establishing the existence of a serious medical need, a prisoner satisfies the
18 objective requirement for proving an Eighth Amendment violation. Farmer v. Brennan, 511 U.S.
19 825, 834 (1994).

20 If a prisoner establishes the existence of a serious medical need, he must then show that
21 prison officials responded to the serious medical need with deliberate indifference. See Farmer,
22 511 U.S. at 834. In general, deliberate indifference may be shown when prison officials deny,
23 delay, or intentionally interfere with medical treatment, or may be shown by the way in which
24 prison officials provide medical care. Hutchinson v. United States, 838 F.2d 390, 393-94 (9th
25 Cir. 1988).

26 Before it can be said that a prisoner's civil rights have been abridged with regard to medical
27 care, “the indifference to his medical needs must be substantial. Mere ‘indifference,’
28 ‘negligence,’ or ‘medical malpractice’ will not support this cause of action.” Broughton v. Cutter

1 Laboratories, 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105-06); see also
2 Toguchi v. Soon Hwang Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) (“Mere negligence in
3 diagnosing or treating a medical condition, without more, does not violate a prisoner's Eighth
4 Amendment rights.”); McGuckin, 974 F.2d at 1059 (same). Deliberate indifference is “a state of
5 mind more blameworthy than negligence” and “requires ‘more than ordinary lack of due care for
6 the prisoner's interests or safety.’” Farmer, 511 U.S. at 835.

7 Delays in providing medical care may manifest deliberate indifference. Estelle, 429 U.S. at
8 104-05. To establish a claim of deliberate indifference arising from delay in providing care, a
9 plaintiff must show that the delay was harmful. See Hallett v. Morgan, 296 F.3d 732, 745-46 (9th
10 Cir. 2002); Berry v. Bunnell, 39 F.3d 1056, 1057 (9th Cir. 1994); McGuckin, 974 F.2d at 1059;
11 Wood v. Housewright, 900 F.2d 1332, 1335 (9th Cir. 1990); Hunt v. Dental Dep't, 865 F.2d 198,
12 200 (9th Cir. 1989); Shapley v. Nevada Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir.
13 1985). In this regard, “[a] prisoner need not show his harm was substantial; however, such would
14 provide additional support for the inmate's claim that the defendant was deliberately indifferent to
15 his needs.” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006).

16 Finally, mere differences of opinion between a prisoner and prison medical staff or between
17 medical professionals as to the proper course of treatment for a medical condition do not give rise
18 to a § 1983 claim. See Toguchi, 391 F.3d at 1058; Jackson v. McIntosh, 90 F.3d 330, 332 (9th
19 Cir. 1996); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989); Franklin v. Oregon, 662 F.2d
20 1337, 1344 (9th Cir. 1981).

21 **B. Analysis**

22 Plaintiff has alleged both doctor defendants Yusufzie and Malakkla are aware of this pain
23 and have failed to take actions to address it. This is minimally sufficient to state potentially
24 cognizable Eighth Amendment claims against these defendants. Plaintiff has not, however,
25 shown what defendant Halepota could, or should, have done to address his pain. Therefore, the
26 court finds plaintiff has failed to allege an Eighth Amendment claim against Halepota. In
27 addition, defendant Adams does not appear to be mentioned in the body of plaintiff's complaint
28 or in the attachments thereto. Therefore, plaintiff has also failed to state a claim against

1 defendant Adams. Plaintiff will be given an opportunity to amend his complaint to state claims
2 against these defendants.

3 **C. Motion to Amend Complaint**

4 Plaintiff moves to amend his complaint to state that he is pursuing relief against each
5 defendant in both their official and individual capacities. Plaintiff may amend his complaint once
6 as a matter of right, without making a motion to do so. See Fed. R. Civ. P. 15(a)(1)(A). While a
7 plaintiff must typically file a new complaint in order to amend, because the amendment plaintiff
8 seeks is minimal, the court will grant his motion and considers the complaint to allege claims
9 against all defendants in both their official and individual capacities.

10 **IV. Amended Complaint**

11 Plaintiff may file an amended complaint to attempt to state claims cognizable under § 1983
12 against defendants Halepota and Adams. To do so, plaintiff must clearly identify each defendant
13 and the action that defendant took that violated his constitutional rights. The court is not required
14 to review exhibits to determine what plaintiff's charging allegations are as to each named
15 defendant. If plaintiff wishes to add a claim, he must include it in the body of the complaint. The
16 charging allegations must be set forth in the amended complaint so defendants have fair notice of
17 the claims plaintiff is presenting. That said plaintiff need not provide every detailed fact in
18 support of his claims. Rather, plaintiff should provide a short, plain statement of each claim. See
19 Fed. R. Civ. P. 8(a).

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

27 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed. R.
28 Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant. Fed. R.

1 Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or
2 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

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.

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

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

15 For the foregoing reasons, IT IS HEREBY ORDERED as follows:

- 16 1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) is granted.
- 17 2. Plaintiff’s motion to amend his complaint (ECF No. 7) is granted.
- 18 3. Plaintiff’s claims for an equal protection violation are dismissed.
- 19 4. Plaintiff’s claims against defendants Halepota and Adams are dismissed with leave to
20 amend. Plaintiff is granted thirty days from the date of service of this order to file an
21 amended complaint that complies with the requirements of the Civil Rights Act, the
22 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended
23 complaint must bear the docket number assigned this case and must be labeled “First
24 Amended Complaint.” Plaintiff must file an original and two copies of the amended
25 complaint. If plaintiff does not file an amended complaint within the time provided, or
26 otherwise respond to this order, this case will proceed on plaintiff’s Eighth Amendment
27 claims against defendants Malakkla and Yusufzie.

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5. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint form used in this district.

Dated: October 15, 2017



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

DLB:9
DLB1/prisoner-civil rights/harr2040.scrn