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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALONSO DEARAUJO,
Plaintiff,
v.
JAMES JACKSON, et al.,
Defendants.

No. 2:17-cv-2419 DB P

ORDER

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. (See ECF Nos. 1, 2). Generally, plaintiff alleges that between January 2016 and July 2016, his medical treatment was either interfered with, delayed, or denied, demonstrating deliberate indifference to his serious chronic pain, in violation of his Eighth Amendment rights. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

I. IN FORMA PAUPERIS APPLICATION

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). (See ECF No. 2). 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

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

8 **II. SCREENING REQUIREMENT**

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

14 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
15 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
16 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
17 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
18 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
19 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
20 Cir. 1989); Franklin, 745 F.2d at 1227.

21 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon
22 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in
23 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467
24 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt
25 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under
26 this standard, the court must accept as true the allegations of the complaint in question, Hosp.
27 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light

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1 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v.
2 McKeithen, 395 U.S. 411, 421 (1969).

3 **III. PLEADING STANDARD**

4 **A. Generally**

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

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

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

22 **B. Linkage Requirement**

23 Under Section 1983, a plaintiff bringing an individual capacity claim must demonstrate
24 that each defendant personally participated in the deprivation of his rights. See Jones v.
25 Williams, 297 F.3d 930, 934 (9th Cir. 2002). There must be an actual connection or link between
26 the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
27 Ortez v. Washington County, State of Oregon, 88 F.3d 804, 809 (9th Cir. 1996); see also Taylor
28 v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

1 **IV. PLAINTIFF’S COMPLAINT**

2 Plaintiff names Mule Creek State Prison’s Dr. James Jackson and nurses Luwam Micael
3 and M. Olsen¹ as defendants in this action. (See ECF No. 1 at 1). He states that between January
4 2016 and July 2016, each of them either delayed, denied or interfered with his medical treatment,
5 demonstrating deliberate indifference to his serious medical need to have his chronic pain² treated
6 in violation of his Eighth Amendment rights. (See id. at 1-6). He claims that during that time, he
7 was experiencing severe pain which he repeatedly reported to defendant Jackson. (See id. at 3-4).
8 However, defendant Jackson: (1) failed to follow through with a referral to ensure plaintiff would
9 be seen by the pain committee, and (2) failed to act in any manner when he saw plaintiff to have
10 his chronic pain treated. (See id.).

11 Plaintiff further asserts that in February 2016 and June 2016 he was seen by defendants
12 Micael and Olsen, respectively for his chronic pain. (See ECF No. 1 at 4). Both defendants,
13 plaintiff claims, “failed to act in any manner” to treat his pain. This, he contends, also
14 demonstrated deliberate indifference to his serious medical needs.

15 **V. RELEVANT LAW**

16 “The Constitution does not mandate comfortable prisons, but neither does it permit
17 inhumane ones.” Farmer v. Brennan, 511 U.S. 825, 832 (1994) (internal quotation marks and
18 citations omitted). “[A] prison official violates the Eighth Amendment only when two
19 requirements are met. First, the deprivation alleged must be, objectively, sufficiently serious; a
20 prison official’s act or omission must result in the denial of the minimal civilized measure of
21 life’s necessities.” Id. at 834 (internal quotation marks and citations omitted). Second, the prison
22 official must subjectively have a sufficiently culpable state of mind, “one of deliberate

23 ¹ Plaintiff has identified these defendants as “Luwam Micael” and “M. Olsen.” (See ECF No. 1 at
24 1-2). However, the records attached to the complaint that are signed by these defendants indicate
25 that the proper spelling of their names are “Luwam Micael” and “M. Olsen.” (See id. at 26-27,
26 35-37, respectively). Consequently, the Clerk of Court will be directed to change the spelling of
27 these defendants’ names on the docket.

28 ² Although plaintiff does not describe in the complaint precisely where his pain is located (see
ECF No. 1 at 1-6), a brief review of the thirty-plus pages of exhibits attached to the complaint
leads the court to believe that the pain of which plaintiff complains is located in his upper
shoulders, neck and lower back (see, e.g., id. at 8, 14).

1 indifference to inmate health or safety.” Id. (internal quotation marks and citations omitted).
2 “This second prong . . . is satisfied by showing (a) a purposeful act or failure to respond to a
3 prisoner’s pain or possible medical need and (b) harm caused by the indifference.” Jett v. Penner,
4 439 F.3d 1091, 1096 (9th Cir. 2006) (internal citations, punctuation and quotation marks
5 omitted); accord, Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Lemire v. CDCR,
6 726 F.3d 1062, 1081 (9th Cir. 2013).

7 The official is not liable under the Eighth Amendment unless he “knows of and disregards
8 an excessive risk to inmate health or safety; the official must both be aware of facts from which
9 the inference could be drawn that a substantial risk of serious harm exists, and he must also draw
10 the inference.” Farmer, 511 U.S. at 837. Then, he must fail to take reasonable measures to abate
11 the substantial risk of serious harm. Id. at 847.

12 Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051, 1060
13 (9th Cir. 2004). “A difference of opinion between a physician and [a] prisoner . . . concerning
14 what medical care is appropriate does not amount to deliberate indifference.” Colwell v.
15 Bannister, 763 F.3d 1060, 1068 (9th Cir. 2014) (citations omitted) (brackets added); Jackson v.
16 McIntosh, 90 F.3d 330, 332 (9th Cir. 1996) (stating where defendant has based action on medical
17 judgment that either of two alternative courses of treatment would be medically acceptable,
18 plaintiff fails to show deliberate indifference as a matter of law). Mere negligence in diagnosing
19 or treating a medical condition does not rise to the level of deliberate indifference, either.
20 Colwell, 763 F.3d at 1081 (citing Hutchinson v. United States, 838 F.2d 390, 394 (9th Cir. 1988)
21 and Jackson, 90 F.3d at 332).

22 **VI. DISCUSSION**

23 **A. Deliberate Indifference Claim Against Defendant Jackson**

24 **1. Facts**

25 In the complaint, plaintiff states that he met with his primary care physician, defendant
26 Jackson, several times between January 2016 and July 2016. (See generally ECF No. 1 at 4). He
27 contends that in February 2016, he met with defendant Jackson about his pain and that at that
28

1 time, defendant Jackson told him that his case had been put up for review before the pain
2 committee and that plaintiff should expect to hear from it within four to six weeks. (See id. at 3).

3 Plaintiff further contends that in March 2016, when plaintiff met with defendant Jackson
4 about his chronic pain, defendant Jackson reiterated to plaintiff that his case was before the pain
5 committee. (See ECF No. 1 at 4). Plaintiff states, however, that he would later learn through an
6 inmate appeal he had filed that his case was not, in fact, up for review in front of the pain
7 committee. (See id.). Thereafter, in June 2016, when plaintiff went to defendant Jackson again to
8 be treated for his chronic pain, he states defendant Jackson told him that he had decided not to put
9 plaintiff's case up for review before the pain committee. (See id.).

10 Plaintiff claims that because defendant Jackson told him that he would present plaintiff's
11 case to the pain committee in January 2016, but later told him in July 2016 that he had decided
12 not to do so, plaintiff suffered with chronic pain for six months. (See generally ECF No. 1 at 4).
13 Defendant Jackson's inaction, plaintiff argues, constituted deliberate indifference to plaintiff's
14 serious medical needs. (See id.).

15 **2. Analysis**

16 **a. Failure to Present Plaintiff's Case to Pain Committee**

17 To the extent plaintiff bases his deliberate indifference claim against defendant Jackson on
18 the ground that defendant Jackson failed to present plaintiff's case to the pain committee, this
19 claim is without merit. This is because ultimately, the claim simply questions defendant
20 Jackson's treatment plan for plaintiff. Such an assertion does not constitute an actionable
21 deliberate indifference claim. See Colwell, 763 F.3d at 1068.

22 Plaintiff complains that for six months, defendant Jackson took a "let's wait and see"
23 approach to the "proper" management of his pain. (See ECF No. 1 at 6). However, as a
24 physician, defendant Jackson was able to make choices about how to manage plaintiff's pain that
25 were within reason. See Snow v. Gladden, 338 F.2d 999, 1001 (9th Cir. 1964) (stating prison
26 medical officials have wide discretion in treating prisoners). Furthermore, plaintiff fails to
27 indicate, how – if at all – putting his case up for review in front of the pain committee would have
28 led to relief of his chronic pain or what result plaintiff believed its review of his case would yield.

1 As stated earlier, deliberate indifference is a high legal standard. Toguchi, 391 F.3d at
2 1060. Mere negligence in diagnosing or treating a medical condition does not amount to
3 deliberate indifference. See Hutchinson, 838 F.2d at 394. The offending conduct must be
4 wanton. Wilson v. Seiter, 501 U.S. 294, 302 (1991).

5 Based upon these facts, defendant Jackson deciding not to present plaintiff's case to the
6 pain committee does not appear to have been wanton, and plaintiff has stated no facts in support
7 of a different finding. On the contrary, it appears that defendant Jackson's decision was part of a
8 reasonable medical treatment plan, especially given the fact in March 2016, defendant Jackson
9 told plaintiff that prior to presenting plaintiff's case to the pain committee, he first wanted to see
10 how plaintiff responded to an increased dosage of his gabapentin prescription and that at that
11 time, plaintiff agreed to this course of treatment. (See ECF No. 1 at 9, 33). The fact that plaintiff
12 does not agree with defendant Jackson's plan now does not constitute deliberate indifference and
13 is not actionable. Nevertheless, on the off-chance that there is more information that plaintiff can
14 provide regarding his deliberate indifference claim against defendant Jackson, plaintiff will be
15 given an opportunity to amend this claim.

16 **b. Failure to Treat Plaintiff's Pain**

17 Next, to the extent plaintiff contends that between January 2016 and July 2016 defendant
18 Jackson "failed to act in any manner" to treat plaintiff for his chronic pain and that therefore, he
19 was deliberately indifferent to plaintiff's medical needs (see generally ECF No. 1 at 3-4), this
20 claim is also without merit. This is because: (1) the statements to support the claim are vague
21 and conclusory, and (2) the records provided by plaintiff directly contradict this claim.

22 With respect to the vague and conclusory nature of plaintiff's claims, as previously stated,
23 plaintiff's deliberate indifference argument rests on the faulty premise that defendant Jackson was
24 deliberately indifferent to his pain solely because he did not put plaintiff's case before the pain
25 committee. (See id. at 3-6). A complete review of the complaint yields no additional statements
26 by plaintiff that are unrelated to the pain committee issue which would otherwise support a
27 deliberate indifference claim. (See generally id. at 1-6). Thus, without the meritless pain
28 committee allegation, plaintiff's deliberate indifference argument falls flat, amounting to nothing

1 more than conclusory statements with no supporting facts. (See generally *id.*). Conclusory
2 statements, without more, are insufficient to establish a claim of relief. See *Iqbal*, 556 U.S. at
3 678.

4 Regarding the court's observation that the records provided by plaintiff contradict his
5 claim that defendant Jackson was deliberately indifferent to plaintiff's chronic pain the court
6 notes the following: First, plaintiff admits that in February 2016, defendant Jackson was
7 responsive to plaintiff's complaints of pain. Specifically, plaintiff states that at that time, when he
8 went to defendant Jackson for pain treatment, defendant Jackson increased his prescription for
9 gabapentin. (See ECF No. 1 at 3). Records plaintiff has provided support this fact. (See *id.* at
10 22) (defendant Jackson's progress notes); (see also *id.* at 8) (appeal form stating in February 2016
11 plaintiff's gabapentin was increased from 600 to 800 mg three times a day). In addition, plaintiff
12 was offered nonsteroidal anti-inflammatory drugs and acetaminophen, but he declined them. (See
13 *id.* at 21).

14 Next, undisputed appeal and medical records provided by plaintiff show that in March
15 2016, when plaintiff was seen by defendant Jackson for his chronic neuropathic pain in his upper
16 and lower spine, plaintiff stated that he was able to do some exercises, and plaintiff's records
17 indicated that he was able to perform his activities of daily living. (See ECF No. 1 at 8, 33).
18 Despite these facts, defendant Jackson still opted to increase plaintiff's gabapentin prescription to
19 900 mg three times a day. (See *id.* at 8-9, 33). At that time, defendant Jackson also told plaintiff
20 that the paperwork to schedule a pain intake appointment for him was going to be put on hold
21 until it was determined whether the higher dosage of gabapentin was effective for his pain. (See
22 *id.* at 9, 33). The record indicates that plaintiff agreed with this plan of care. (See *id.* at 8, 21). It
23 also shows that defendant Jackson opted to continue plaintiff's enrollment in the Chronic Care
24 Program as well. (See *id.* at 32). Furthermore, the records provided indicate that at that time,
25 plaintiff had also been prescribed 300 mg of oxcarbazepine twice a day, which, according to
26 California Correctional Health Care Services authorities, is recognized as a pain management
27 medication by the California Correctional Health Care Services Pain Management Guidelines
28 2009. (See *id.* at 9).

1 In sum, because plaintiff's overall statements about defendant Jackson's treatment of him
2 during this six-month period are vague and conclusory (see ECF No. 1 at 3-4) and because the
3 records provided by plaintiff directly contradict his claim that between January 2016 and July
4 2016 defendant Jackson was deliberately indifferent to his serious medical needs, this claim is
5 without merit. However, plaintiff shall be given an opportunity to amend the complaint to
6 provide additional information with respect to this claim that may make it cognizable.

7 **B. Deliberate Indifference Claims Against Defendants Micael and Olsen**

8 **1. Facts**

9 With respect to plaintiff's claims against defendants Micael and Olsen, plaintiff's claim
10 against defendant Micael states in its entirety:

11 On 2-26-16 [I] was seen at the facility "B" clinic for [my] chronic pain per
12 [my] request and was seen by defendant Micael, R.N. Defendant Micael failed to
13 act in any manner and was deliberate and indifferent [sic] to [my] [m]edical needs
as defendant Micael failed to act in any manner.

14 (ECF No. 1 at 4) (brackets added).

15 Plaintiff's claim against defendant Olsen states in its entirety: "On 6-28-16 [I] requested
16 to be seen due to [my] chronic pain and was see[n] by defendant M. Olsen who failed to act in
17 any manner due to [my] chronic pain. Defendant Olsen was deliberate and indifferent to [my]
18 ongoing serious medical needs." (ECF No. 1 at 4) (brackets added). Additional statements
19 plaintiff makes about both defendants Micael and Olsen are the following:

20
21 Defendant M. Olsen did nothing when [I] complained to her about being in serious
22 pain. Defendant Micael R.N. also failed [sic] to act when [I] personal [sic]
23 complained to her about [my] chronic pain. Therefore all named Defendants were
24 deliberate and indifferent to the chronic pain [I] was experiencing. Each named
25 Defendant herein delayed, denied and failed to act personally. Their inactions
26 clearly showed deliberate and [sic] indifference to plaintiff's seious [sic] chronic
27 pain as shown within the complaint and the supporting documents.

28 (ECF No. 1 at 6) (brackets added).

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1 **2. Analysis**

2 **a. Defendant Olsen**

3 Plaintiff’s claim that defendant Olsen was deliberately indifferent to his pain in June 2016
4 (see ECF No. 1 at 4) is without merit. This is because the record provided by plaintiff directly
5 contradicts this claim.

6 The sole incident in question to which plaintiff refers that involves defendant Olsen took
7 place in June 2016. (See ECF No. 1 at 4, 34-37). During that month, plaintiff filled out a health
8 care services request form to be treated because he had twisted his knee while playing soccer.
9 (See *id.* at 35). The next day, he was seen by defendant Olsen. (See *id.* at 35-37). In response to
10 plaintiff’s complaints of pain, defendant Olsen gave him 220 mg tabs of naproxen sodium to take.
11 (See *id.*). Defendant Olsen also wrapped plaintiff’s knee and advised him to keep it elevated and
12 to rest it. (See ECF No. 1 at 37). In addition, defendant Olsen advised plaintiff to stay hydrated
13 while taking the medication and to take it with food to avoid nausea. (See *id.*). Finally,
14 defendant Olsen advised plaintiff to return to the clinic if his symptoms worsened. (See *id.*).
15 During the visit, plaintiff stated that he understood these instructions. (See *id.*).

16 In light of these facts, plaintiff’s claim that in June 2016 defendant Olsen “failed to act in
17 any manner” to treat plaintiff’s chronic pain and that therefore, he or she was deliberately
18 indifferent to it is clearly contradicted by the record. Consequently, this claim is without merit.
19 However, plaintiff will be given the opportunity to amend this claim as well.

20 **b. Defendant Micael**

21 Plaintiff claims that in February 2016, defendant Micael demonstrated deliberate
22 indifference to plaintiff’s chronic pain when she “failed to act in any manner” to treat it. (See
23 ECF No. 1 at 4). Plaintiff provides no demonstrative facts to support this claim. However, the
24 records plaintiff references to support it chronicle defendant Micael’s treatment of plaintiff in
25 January 2016. (See *id.* at 4, 25-27). At that time, in response to plaintiff’s complaint of chronic
26 pain under the right side of his ribs which had been ongoing for the past few days, defendant
27 Micael advised plaintiff to continue activity only if he could tolerate it and to resubmit a 7362
28 form and follow up in the nurse’s clinic in 72 hours if his symptoms persisted. (See *id.* at 26).

1 The application of ice or heat as appropriate was also advised. (See id. at 27). In addition,
2 plaintiff received a referral to a follow up appointment with a nurse. (See id. at 26).

3 Given these facts, it is clear that plaintiff’s allegation that defendant Micael “failed to act
4 in any manner” to treat plaintiff’s pain is also directly contradicted by the record. As a result,
5 plaintiff’s deliberate indifference claim against him is without merit. All the same, plaintiff will
6 be given an opportunity to amend this claim as well.

7 **VII. OPTIONAL LEAVE TO AMEND**

8 Plaintiff will be given the opportunity to amend the complaint. If plaintiff chooses to file
9 an amended complaint, the court will dismiss the instant complaint without prejudice, and the
10 newly filed amended complaint will take its place. See Lacey v. Maricopa Cty., 693 F.3d 896,
11 925 (9th Cir. 2012) (stating amended complaint supersedes original complaint). Any amended
12 complaint filed should observe the following:

13 An amended complaint must identify as a defendant only persons who personally
14 participated in a substantial way in depriving plaintiff of a federal constitutional right. Johnson v.
15 Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a
16 constitutional right if he does an act, participates in another’s act or omits to perform an act he is
17 legally required to do that causes the alleged deprivation).

18 An amended complaint must also contain a caption including the names of all defendants.
19 Fed. R. Civ. P. 10(a). Plaintiff may not change the nature of this suit by alleging new, unrelated
20 claims. See George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

21 Any amended complaint must be written or typed so that it is complete in itself without
22 reference to any earlier filed complaint. See L.R. 220 (E.D. Cal. 2009). This is because an
23 amended complaint supersedes any earlier filed complaint, and once an amended complaint is
24 filed, the earlier filed complaint no longer serves any function in the case. See Loux v. Rhay, 375
25 F.2d 55, 57 (9th Cir. 1967) (“The amended complaint supersedes the original, the latter being
26 treated thereafter as non-existent.”), overruled on other grounds by Lacey v. Maricopa Cty., 693
27 F.3d 896 (2012).

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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion to proceed in forma pauperis filed October 30, 2017 (ECF No. 2) is GRANTED;

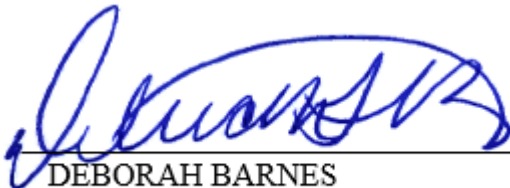
2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the appropriate agency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

3. Plaintiff's complaint filed October 30, 2017 (ECF No. 1) is DISMISSED with leave to amend;

4. Within thirty days of the date of service of this order, plaintiff shall file a first amended complaint. Failure to file an amended complaint within the time allotted may result in the dismissal of this action for failure to prosecute, and

5. The Clerk of Court shall correct the spelling of the names of defendants "Luwan Micael" and "M. Olson" on the docket. The new spellings shall be "Luwam Micael" and "M. Olsen."

Dated: June 7, 2019


DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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