

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

ETUATE SEKONA,
Plaintiff,
v.
E. HOROWITZ, et al.,
Defendants.

No. 2:17-CV-2479-JAM-DMC

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is Plaintiff’s complaint (Doc. 1). Plaintiff alleges that Defendants violated his Eighth Amendment right against cruel and usual punishment by denying him proper medical treatment and delaying further medical treatment.

I. SCREENING REQUIREMENT AND STANDARD

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2).

///

1 help. Plaintiff further contends that he had a seizure on July 4, 2014, and Dr. Horowitz was
2 deliberately indifferent to his medical needs by directing the nurse to keep him in his cell until Dr.
3 Horowitz returned two days later. Second, Plaintiff alleges Dr. E. Horowitz denied him access to
4 a cane or walker for three years and has declined to further treat Plaintiff for the past three years.
5 Plaintiff contends this delay and denial of treatment constitutes deliberate indifference to his
6 serious medical needs. Plaintiff alleges no facts related to Defendants Joe A. Lizarraga, Medical
7 Receiver, or C.C. Healthcare Services.

8 9 **III. ANALYSIS**

10 The treatment a prisoner receives in prison and the conditions under which the
11 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel
12 and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan,
13 511 U.S. 825, 832 (1994). The Eighth Amendment “. . . embodies broad and idealistic concepts
14 of dignity, civilized standards, humanity, and decency.” Estelle v. Gamble, 429 U.S. 97, 102
15 (1976). Conditions of confinement may, however, be harsh and restrictive. See Rhodes v.
16 Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with
17 “food, clothing, shelter, sanitation, medical care, and personal safety.” Toussaint v. McCarthy,
18 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only when
19 two requirements are met: (1) objectively, the official’s act or omission must be so serious such
20 that it results in the denial of the minimal civilized measure of life’s necessities; and (2)
21 subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of
22 inflicting harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison
23 official must have a “sufficiently culpable mind.” See id.

24 Deliberate indifference to a prisoner’s serious illness or injury, or risks of serious
25 injury or illness, gives rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 105;
26 see also Farmer, 511 U.S. at 837. This applies to physical as well as dental and mental health
27 needs. See Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). An injury or illness is
28 sufficiently serious if the failure to treat a prisoner’s condition could result in further significant

1 injury or the “. . . unnecessary and wanton infliction of pain.” McGuckin v. Smith, 974 F.2d
2 1050, 1059 (9th Cir. 1992); see also Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994).
3 Factors indicating seriousness are: (1) whether a reasonable doctor would think that the condition
4 is worthy of comment; (2) whether the condition significantly impacts the prisoner’s daily
5 activities; and (3) whether the condition is chronic and accompanied by substantial pain. See
6 Lopez v. Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000) (en banc).

7 The requirement of deliberate indifference is less stringent in medical needs cases
8 than in other Eighth Amendment contexts because the responsibility to provide inmates with
9 medical care does not generally conflict with competing penological concerns. See McGuckin,
10 974 F.2d at 1060. Thus, deference need not be given to the judgment of prison officials as to
11 decisions concerning medical needs. See Hunt v. Dental Dep’t, 865 F.2d 198, 200 (9th Cir.
12 1989). The complete denial of medical attention may constitute deliberate indifference. See
13 Toussaint v. McCarthy, 801 F.2d 1080, 1111 (9th Cir. 1986). Delay in providing medical
14 treatment, or interference with medical treatment, may also constitute deliberate indifference. See
15 Lopez, 203 F.3d at 1131. Where delay is alleged, however, the prisoner must also demonstrate
16 that the delay led to further injury. See McGuckin, 974 F.2d at 1060.

17 Negligence in diagnosing or treating a medical condition does not, however, give
18 rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 106. Moreover, a
19 difference of opinion between the prisoner and medical providers concerning the appropriate
20 course of treatment does not give rise to an Eighth Amendment claim. See Jackson v. McIntosh,
21 90 F.3d 330, 332 (9th Cir. 1996).

22 Plaintiff alleges that each named defendant violated his eighth amendment right
23 against cruel and unusual punishment. However, there are no factual allegations that indicate
24 Defendants Joe A. Lizarraga, Medical Receiver, or C.C. Healthcare Services were involved in the
25 alleged violations. In fact, the only location in the complaint where these Defendants are
26 mentioned is in the caption on the first page. A plaintiff must plead that each government official
27 defendant through the official’s own individual actions, violated the constitution, and Plaintiff has
28 not done so here in relation to these three Defendants. For that reason, the claims are dismissed

1 in relation to Defendants Joe A. Lizarraga, Medical Receiver, or C.C. Healthcare Services.
2 Though the complaint borders on conclusory and contains limited factual assertions, this court
3 finds that there are sufficient facts in the complaint for Plaintiff's claims related to Defendant Dr.
4 E. Horowitz to proceed past screening. Additionally, Plaintiff will be provided an opportunity to
5 amend as to Defendants Joe A. Lizarraga, Medical Receiver, and C.C. Healthcare Services.

7 IV. AMENDING THE COMPLAINT

8 Because it is possible that the deficiencies identified in this order may be cured by
9 amending the complaint, plaintiff is entitled to leave to amend. See Lopez v. Smith, 203 F.3d
10 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is informed that, as a general rule, an
11 amended complaint supersedes the original complaint. See Ferdik v. Bonzelet, 963 F.2d 1258,
12 1262 (9th Cir. 1992). Therefore, if plaintiff amends the complaint, the court cannot refer to the
13 prior pleading in order to make plaintiff's amended complaint complete. See Local Rule 220. An
14 amended complaint must be complete in itself without reference to any prior pleading. See id.

15 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
16 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
17 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
18 each named defendant is involved, and must set forth some affirmative link or connection
19 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d
20 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

21 Because the complaint appears to otherwise state a cognizable claim, if no
22 amended complaint is filed within the time allowed therefor, the court will issue findings and
23 recommendations that Defendants Joe A. Lizarraga, Medical Receiver, or C.C. Healthcare
24 Services be dismissed from this case, as well as such further orders as are necessary for service of
25 process as to the remaining defendant(s).

26 ///

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

V. CONCLUSION

Accordingly, IT IS HEREBY ORDERED that plaintiff may file a first amended complaint within 30 days of the date of service of this order.

Dated: December 19, 2018



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE