

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

PAUL C. TOMASINI,
Plaintiff,
v.
JAMES CHAU, et al.,
Defendants.

No. 2:18-cv-0286 JAM AC 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. ECF Nos. 1, 2. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

For the reasons stated herein, plaintiff’s motion to proceed in forma pauperis will be granted, and his request for emergency injunctive relief shall be denied as premature. Plaintiff will also be given the opportunity to amend the complaint.

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

28 ///

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 Government officials may not be held liable for the actions of their subordinates under a
2 theory of respondeat superior. Iqbal, 556 U.S. at 676 (stating vicarious liability is inapplicable in
3 Section 1983 suits). Since a government official cannot be held liable under a theory of vicarious
4 liability in Section 1983 actions, plaintiff must plead sufficient facts showing that the official has
5 violated the Constitution through his own individual actions by linking each named defendant
6 with some affirmative act or omission that demonstrates a violation of plaintiff's federal rights.
7 Iqbal, 556 U.S. at 676.

8 IV. PLAINTIFF'S COMPLAINT

9 Plaintiff names Mule Creek State Prison's ("MCSP") Dr. James Chau, Dr. James Jackson,
10 Dr. Christopher Smith, Dr. Jonathan Ashby, Dr. Darrel Hopkins, and Nurse D. Gentry as well as
11 California Correctional Health Care Services' ("CCHCS") Chief Executive Officer W. David
12 Smiley and Deputy Director of Policy and Risk Management Services J. Lewis as defendants in
13 this action. See ECF No. 1 at 1-4. In sum, he claims that between 2015 and 2018, each defendant
14 in his or her own way either delayed, improperly treated or had improper responses to his bladder,
15 prostate and cancer conditions. See generally id. at 5-15. Plaintiff asserts that as the result of
16 defendants' improper responses to his illnesses, he experienced permanent damage to his anatomy
17 and bladder function, unnecessary advancement and likely metastasis of aggressive cancer,
18 discomfort, pain, infections, sleep disturbances, the need for more aggressive treatment, and
19 depression. See id. at 5, 14. Defendants' delayed and/or improper responses to his serious
20 medical needs, plaintiff contends, constituted deliberate indifference to his serious medical needs
21 and cruel and unusual punishment. See id.

22 Plaintiff asks the court to order emergency injunctive relief so that he may receive a da
23 Vinci robotic prostatectomy at U.C. Davis Medical Center. See ECF No. 1 at 16-17. In addition,
24 plaintiff seeks an order requiring defendants to provide any treatment regimen that any licensed
25 medical clinician deems appropriate for the effective treatment of plaintiff's adenocarcinoma, and
26 that they be required to provide such treatment for the rest of plaintiff's life. See id. Finally,
27 plaintiff asks for monetary damages of ten million dollars. See id.

28 ///

1 V. LEGAL STANDARDS

2 A. Deliberate Indifference to Serious Medical Need

3 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate
4 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091,
5 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). This requires plaintiff
6 to show (1) “a ‘serious medical need’ by demonstrating that ‘failure to treat a prisoner’s condition
7 could result in further significant injury or the unnecessary and wanton infliction of pain,” and
8 (2) “the defendant’s response to the need was deliberately indifferent.” Id. (some internal
9 quotation marks omitted) (quoting McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992)).

10 Deliberate indifference is established only where the defendant subjectively “knows of
11 and disregards an *excessive risk* to inmate health and safety.” Toguchi v. Chung, 391 F.3d 1051,
12 1057 (9th Cir. 2004) (emphasis added) (citation and internal quotation marks omitted).

13 Deliberate indifference can be established “by showing (a) a purposeful act or failure to respond
14 to a prisoner’s pain or possible medical need and (b) harm caused by the indifference.” Jett, 439
15 F.3d at 1096 (citation omitted).

16 A difference of opinion between an inmate and prison medical personnel—or between
17 medical professionals—regarding appropriate medical diagnosis and treatment is not enough to
18 establish a deliberate indifference claim. Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989);
19 Toguchi, 391 F.3d at 1058. Additionally, “a complaint that a physician has been negligent in
20 diagnosing or treating a medical condition does not state a valid claim of medical mistreatment
21 under the Eighth Amendment. Medical malpractice does not become a constitutional violation
22 merely because the victim is a prisoner.” Estelle, 429 U.S. at 106.

23 VI. DISCUSSION

24 A. Deliberate Indifference to Serious Medical Needs (Claim I)

25 Plaintiff’s complaint, which is seventeen pages in length, goes into a fair amount of detail
26 regarding each defendant’s actions or lack thereof while treating him. See ECF No. 1 at 5-15. It
27 is clear from the face of the complaint that plaintiff’s prostate and bladder problems and cancer
28 diagnosis constitute serious medical conditions. See Lopez v. Smith, 203 F.3d 1122, 1131 (9th

1 Cir. 2000) (defining serious medical need as one that reasonable doctor would find important and
2 worthy comment or treatment). However, none of plaintiff's allegations against any of the named
3 defendants allege a sufficiently culpable state of mind to support a cognizable claim of deliberate
4 indifference to those serious medical needs. See generally ECF No. 1 at 5-15. Plaintiff does not
5 allege that any of the defendants either intentionally delayed his treatment or deprived him of
6 treatment with knowledge that doing so created a substantial risk of serious harm. It appears that
7 plaintiff is simply dissatisfied that he has not received the treatment he would have preferred from
8 each defendant at the time that he wanted it.

9 It is well-established that a prisoner is not entitled to a particular type of treatment plan or
10 medical regimen. See Farmer v. Brennan, 511 U.S. 825, 832-33 (1994) (stating prison officials
11 must insure inmates receive *adequate* medical care) (emphasis added); Brown v. Plata, 563 U.S.
12 493, 511 (2011) (stating prison that deprives prisoners of *adequate* medical care is incompatible
13 with concept of human dignity) (emphasis added); Hudson, 503 U.S. at 9 (stating society does not
14 expect prisoners to have unqualified access to health care); see generally Roberts v. Spalding, 783
15 F.2d 867, 870 (9th Cir. 1986) (stating inmate has no independent constitutional right to outside
16 medical care additional and supplemental to that provided by prison staff). Indeed, prison
17 officials have broad discretion in how the health concerns of inmates are managed. See Smith v.
18 Schneckloth, 414 F.2d 680, 681 (9th Cir. 1969) (stating correctional authorities have wide
19 discretion in matters of internal prison administration and reasonable action within scope of said
20 discretion does not violate prisoner's constitutional rights); see Riley v. Rhay, 407 F.2d 496, 479
21 (9th Cir. 1969); Snow v. Gladden, 338 F.2d 999, 1001 (9th Cir. 1964). In sum, the denial by any
22 defendant of a particular type of treatment, or implementation of a treatment plan different than
23 the one plaintiff wanted, does not by itself violate the Eighth Amendment.

24 Regarding the fact that plaintiff's diagnosis and treatment has spanned a period of
25 approximately three years, there is no indication in the complaint that the protracted treatment
26 was deliberate and/or wanton on any of the defendants' parts. See generally ECF No. 1 at 5-15.
27 Even if each defendant's approach to plaintiff's treatment was lax or could have been addressed
28 more quickly, that is not enough to state a claim under the Eighth Amendment. Deliberate

1 indifference requires “more than ordinary lack of due care for the prisoner’s interests or safety.”
2 Whitley, 475 U.S. at 319; Farmer, 511 U.S. at 835 (citing Whitley).

3 Plaintiff’s allegations regarding defendants Smith, Lewis, and Smiley involve their denials
4 of plaintiff’s medical consult appeals. The denial of an administrative appeal does not in itself
5 support an Eighth Amendment claim.¹ However, allegations that a correctional defendant failed
6 to adequately respond to a prisoner's serious medical needs, after becoming aware of those needs
7 through the appeals process, may under some circumstances state a cognizable claim. See Jett,
8 439 F.3d at 1097-98 (prison administrators may be “liable for deliberate indifference when they
9 knowingly fail to respond to an inmate's requests for help”); Payan v. Tate, 2017 WL 880422, at
10 *5, 2017 U.S. Dist. LEXIS 31496, at *13-4 (E.D. Cal. Mar. 6, 2017) (Case No. 1:13-cv-0807 LJO
11 BAM PC) (“Plaintiff has not merely complained that the Defendants reviewed or denied his
12 inmate appeal. Rather, plaintiff has alleged that he put the reviewing defendants on notice
13 through the inmate appeals process, establishing knowledge, that Plaintiff had ongoing serious
14 medical conditions and was not receiving proper care.”), report and recommendation adopted,
15 2017 WL 1214015, 2017 U.S. Dist. LEXIS 49613 (E.D. Cal. Mar. 31, 2017). To proceed against
16 these defendants, just as with the treating doctors, plaintiff must provide factual allegations that
17 demonstrate their deliberate indifference: he must plausibly allege how each defendant had
18 personal knowledge of plaintiff’s serious medical needs, and how each defendant’s response to
19 those needs, or failure to act, violated plaintiff’s right to constitutionally adequate medical care.

20 For all the reasons explained above, plaintiff’s deliberate indifference claims are
21 insufficient to proceed. Accordingly, the complaint will not be served in its present form.
22 Plaintiff will, however, be provided the opportunity to amend the complaint in order to provide
23 any additional information that might make these claims viable.

24 ///

25 ¹ A challenge to a correctional official's handling or processing of an inmate appeal does not state
26 a due process claim. “[P]rison officials are not required to process inmate grievances in a specific
27 grievance process, plaintiff cannot state a cognizable civil rights claim for a violation of his due
28 process rights based on allegations that prison officials ignored or failed to properly process his
inmate grievances.” Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003).

1 B. Cruel and Unusual Punishment Claim (Claim II)

2 Although the complaint asserts a cruel and unusual punishment claim independently of the
3 medical care claim, it is based on the same facts regarding allegedly inadequate medical
4 treatment. See ECF No. 1 at 14. Plaintiff does not challenge any other conditions of his
5 confinement. Accordingly, plaintiff’s second claim will be disregarded as duplicative.

6 Plaintiff is informed that deliberately indifferent medical care is prohibited by the Eighth
7 Amendment’s ban on cruel and unusual punishment. There is no need to separately state claims
8 for deliberate indifference and cruel and unusual punishment; when it comes to unconstitutionally
9 deficient prison medical care, they are the same thing. Plaintiff’s contention that his medical care
10 constituted cruel and unusual punishment is fully encompassed by his deliberately indifferent
11 medical care claim.

12 C. Injunctive Relief Request

13 Although the complaint’s Request for Relief section states that plaintiff seeks an
14 “emergency injunction” for specific medical treatment, plaintiff has not separately moved for
15 preliminary injunctive relief. Plaintiff is informed that a request for a preliminary injunction will
16 not be considered unless it is presented in accordance with Rule 65 of the Federal Rules of Civil
17 Procedure and Local Rule 231 of this court. These rules generally require, among other things,
18 notice to the opposing party. In this case, defendants have not yet been served and are not on
19 notice of plaintiff’s demand for relief.

20 Plaintiff is informed that in evaluating the merits of a properly-filed motion for
21 preliminary injunctive relief, the court must consider whether the movant has shown that “he is
22 likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
23 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the
24 public interest.” Winter v. Natural Resources Defense Council, 555 U.S. 7, 20 (2008); accord
25 Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009). Moreover, in cases brought by
26 prisoners involving conditions of confinement, any preliminary injunctive relief “must be
27 narrowly drawn, extend no further than necessary to correct the harm the court finds requires

28 ////

1 preliminary relief, and be the least intrusive means necessary to correct the harm.” 18 U.S.C. §
2 3626(a)(2).

3 VII. LEAVE TO AMEND

4 Plaintiff will be given the opportunity to amend the complaint. If plaintiff chooses to file
5 an amended complaint, the court will dismiss the instant complaint without prejudice, and the
6 newly filed amended complaint will take its place. See Lacey v. Maricopa Cty., 693 F.3d 896,
7 925 (9th Cir. 2012) (stating amended complaint supersedes original complaint). Any amended
8 complaint filed should observe the following:

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

14 An amended complaint must also contain a caption including the names of all defendants.
15 Fed. R. Civ. P. 10(a). Plaintiff may not change the nature of this suit by alleging new, unrelated
16 claims. See George, 507 F.3d at 607.

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

24 VIII. PLAIN LANGUAGE SUMMARY OF THIS ORDER FOR A PRO SE LITIGANT

25 Your complaint is being dismissed because the facts you allege do not show that the
26 doctors who denied the treatment you wanted did so with “deliberate indifference.” Deliberate
27 indifference requires that the doctors knew that their treatment choices placed you at substantial

28 ///

1 risk of further injury or suffering. You are being given the opportunity to amend your complaint
2 to add facts that would show they knew this.

3 Keep in mind that requests for preliminary injunctions do not belong in the complaint;
4 they must be presented by motion and comply with the Federal Rules of Civil Procedure.
5 Requests for a permanent injunction may be listed in the complaint along with other relief that
6 you seek in this case.

7 CONCLUSION

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. Plaintiff's motion to proceed in forma pauperis, filed February 7, 2018 (ECF No. 2), is
10 GRANTED;

11 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
12 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §
13 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
14 appropriate agency filed concurrently herewith;

15 3. Plaintiff's complaint, filed February 7, 2018 (ECF No. 1), is DISMISSED with leave
16 to amend; and

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

20 DATED: July 12, 2019

21 
22 ALLISON CLAIRE
23 UNITED STATES MAGISTRATE JUDGE
24
25
26
27
28