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

BENJAMIN RAMOS,
Plaintiff,
v.
JEAN WEISS, et al.,
Defendants.

No. 2:19-CV-1468-DMC-P

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 (ECF No. 1). Also before the court is plaintiff’s motion for expedited screening (ECF No. 7).

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). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the

1 complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it
2 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege
3 with at least some degree of particularity overt acts by specific defendants which support the
4 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
5 impossible for the court to conduct the screening required by law when the allegations are vague
6 and conclusory.

8 I. PLAINTIFF'S ALLEGATIONS

9 Plaintiff Benjamin Ramos names the following as defendants: (1) Jean Weiss (J.
10 Weiss), (2) Richard Weiss (R. Weiss), (3) Christopher Smith, and (4) K. Richardson. Plaintiff is
11 an inmate at Mule Creek State Prison (MCSP) in Ione, California.

12 MCSP utilizes "black box" restraints to transport inmates outside of the prison.
13 The black box is an eight-pound metal box which is used to attach a prisoner's waist chains and
14 his left and right handcuffs to the center of his body. Plaintiff alleges the black box exerts
15 constant twisting pressure on a prisoner's wrists and shoulders, resulting in physical pain after
16 prolonged use. See ECF No. 1, pgs. 5-6.

17 On November 15, 2017, R. Weiss, plaintiff's primary care physician, had plaintiff
18 transported out of the prison to San Joaquin General Hospital for treatment. He was placed in
19 black box restraints for an estimated 8.5 hours. Plaintiff suffered constant pain in his wrists and
20 shoulders. At the hospital, plaintiff was diagnosed with prostate cancer. Id.

21 Following this visit, R. Weiss told plaintiff he was having him sent to San Joaquin
22 for follow-up treatment. Plaintiff told R. Weiss that the black box was causing him great physical
23 pain, but R. Weiss did not order him an accommodation despite having to authority to do so. Id.

24 Under the orders of R. Weiss and Christopher Smith, the Chief Physician and
25 Surgeon for MCSP, plaintiff made follow-up visits for medical treatment on April 23 and May
26 15, 2018. On both occasions plaintiff was restrained with the black box and suffered physical pain
27 as a result. Id. at pgs. 8-9.

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1 On June 13, 2018, Plaintiff again complained of the pain caused by wearing the
2 black box during his medical visits. On that same day, R. Weiss diagnosed plaintiff as having
3 pain in his right hand. Id.

4 On the orders of R. Weiss and Smith, plaintiff made two more follow up medical
5 visits on August 27 and October 12, 2018. He was again restrained with the black box and
6 suffered pain. Id. at pgs. 8-12.

7 On December 3, 2018, plaintiff submitted a request for a medical accommodation
8 to allow him to travel for treatment without the black box restraint. In stating the reasons for his
9 request, plaintiff cited his advanced age, his having arthritis, and the constant pressure on his
10 wrists and shoulders. Id.

11 On December 6, 2018, R. Weiss filled out a medical form outlining many of
12 plaintiff's physical disabilities. R. Weiss described plaintiff as having severe orthopedic
13 conditions of the hips, knees, ankles, feet, and upper extremities. Id. at pg. 14.

14 On December 11, 2018, Smith and Jean Weiss, Associate Warden for Americans
15 with Disabilities Act prisoners at MCSP, denied plaintiff's request. Plaintiff was informed that he
16 did not meet the criteria for "special cuffing" during transports. See ECF No. 1, pg. 12

17 On January 29, 2019 C. Smith denied plaintiff's appeal. Plaintiff contends that C.
18 Smith denied his appeal as a sort of retaliation for plaintiff's repeated complaints to R. Weiss. Id.
19 at pg. 14,15.

20 On April 17, 2019 R. Weiss submitted a request for hand surgery for the plaintiff's
21 right wrist, citing a collapse of the carpal bone. Id. at pg. 16.

22 On April 30, 2019, plaintiff's medical appeal was denied at the third and final
23 level. Id.

24 On May 15, 2019, an X-ray of plaintiff's right hand ordered by R. Weiss found an
25 increase in pain and mild to moderate arthropathy involving the second and third MCP joints. Id.

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2. Jean Weiss

Here, as to defendant Jean Weiss, plaintiff has also failed to state a cognizable claim under 42 U.S.C. § 1983. The extent of the complaint’s mention of J. Weiss is that he or she denied plaintiff’s request for a medical accommodation on December 11, 2018, and that he or she had independent authority to grant such an accommodation. Plaintiff does not mention what J. Weiss’s responsibilities to the plaintiff were, nor the degree to which J. Weiss was aware of his injuries. Plaintiff simply states that J. Weiss denied the first of what would ultimately be three separate appeals for medical accommodation without describing what effect this specific action had on his alleged injuries.

3. Christopher Smith

Here, as to defendant Christopher Smith, plaintiff has also failed to state a cognizable claim under 42 U.S.C. § 1983. It is unclear to what degree Smith was involved in plaintiff’s medical treatment beyond organizing some of plaintiff’s outside medical visits with R. Weiss. It is uncertain whether Smith was responsible for providing medical care to plaintiff or to what degree he was aware of plaintiff’s injuries. Also, plaintiff alleges that Smith denied his accommodation appeal at the second level because he “refu[sed] to cooperate with Defendants Richard Weiss’s and Smith’s desires to torture Plaintiff in return for providing Plaintiff necessary medical care.” ECF No.1, pg. 15. This however, is a conclusory allegation at best. It is unclear if plaintiff is alleging that R. Weiss and Smith conditioned his access to medical treatment on his wearing the black box restraints. Nor is it clear if plaintiff is suggesting that Smith was aware of his discomfort at wearing the restraints and denied the requests for an accommodation for the purpose of causing the plaintiff pain. Therefore, there are insufficient facts from which a causal connection can be made between Smith’s individual conduct and plaintiff’s claim of deliberate indifference.

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1 **B. Deliberate Indifference**

2 As to defendant R. Weiss, has failed to allege facts which give rise to a claim of
3 deliberate indifference.

4 The treatment a prisoner receives in prison and the conditions under which the
5 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel
6 and unusual punishment. See *Helling v. McKinney*, 509 U.S. 25, 31 (1993); *Farmer v. Brennan*,
7 511 U.S. 825, 832 (1994). A prison official violates the Eighth Amendment only when two
8 requirements are met: (1) objectively, the official’s act or omission must be so serious such that it
9 results in the denial of the minimal civilized measure of life’s necessities; and (2) subjectively,
10 the prison official must have acted unnecessarily and wantonly for the purpose of inflicting harm.
11 See *Farmer*, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison official must have
12 a “sufficiently culpable mind.” See *id.*

13 Deliberate indifference to a prisoner’s serious illness or injury, or risks of serious
14 injury or illness, gives rise to a claim under the Eighth Amendment. See *Estelle*, 429 U.S. at 105;
15 see also *Farmer*, 511 U.S. at 837. An injury or illness is sufficiently serious if the failure to treat a
16 prisoner’s condition could result in further significant injury or the “. . . unnecessary and wanton
17 infliction of pain.” *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other
18 grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc); see also *Doty*
19 *v. County of Lassen*, 37 F.3d 540, 546 (9th Cir. 1994). Factors indicating seriousness are: (1)
20 whether a reasonable doctor would think that the condition is worthy of comment; (2) whether the
21 condition significantly impacts the prisoner’s daily activities; and (3) whether the condition is
22 chronic and accompanied by substantial pain. See *Lopez v. Smith*, 203 F.3d 1122, 1131-32 (9th
23 Cir. 2000) (en banc).

24 The requirement of deliberate indifference is less stringent in medical needs cases
25 than in other Eighth Amendment contexts because the responsibility to provide inmates with
26 medical care does not generally conflict with competing penological concerns. See *McGuckin*,
27 974 F.2d at 1060. Thus, deference need not be given to the judgment of prison officials as to
28 decisions concerning medical needs. See *Hunt v. Dental Dep’t*, 865 F.2d 198, 200 (9th Cir.

1 1989). The complete denial of medical attention may constitute deliberate indifference. See
2 Toussaint v. McCarthy, 801 F.2d 1080, 1111 (9th Cir. 1986). Delay in providing medical
3 treatment, or interference with medical treatment, may also constitute deliberate indifference. See
4 Lopez, 203 F.3d at 1131. Where delay is alleged, however, the prisoner must also demonstrate
5 that the delay led to further injury. See McGuckin, 974 F.2d at 1060.

6 Negligence in diagnosing or treating a medical condition does not, however, give
7 rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 106. Moreover, a
8 difference of opinion between the prisoner and medical providers concerning the appropriate
9 course of treatment does not give rise to an Eighth Amendment claim. See Jackson v. McIntosh,
10 90 F.3d 330, 332 (9th Cir. 1996).

11 Here, plaintiff's condition is sufficiently serious to make out an 8th Amendment
12 claim. For a period of over one-year, plaintiff alleges that he was subjected to hours of
13 excruciating pain to his wrists and upper extremities as a result of the black box restraint. Also,
14 plaintiff has alleged facts which plausibly suggest that R. Weiss's medical attention, or lack
15 thereof, contributed to plaintiff's suffering. From November 15, 2017 to January 20, 2019, R.
16 Weiss was aware that the black box restraint was causing severe pain to plaintiff. Yet, despite
17 having the authority to issue a medical accommodation, did not do so.

18 However, these allegations, if true, do not give rise to a claim of deliberate
19 indifference. The complaint makes no suggestion that, in failing to grant plaintiff an
20 accommodation, R. Weiss acted wantonly for the purpose of causing plaintiff harm. Nothing in
21 the facts suggests that R. Weiss's inaction was set out with the deliberate purpose of hurting the
22 plaintiff. The facts do not even allege that plaintiff made a direct request to R. Weiss for an
23 accommodation. While the complete denial of medical attention may constitute deliberate
24 indifference, R. Weiss did not completely withhold medical treatment. On the contrary, as the
25 facts state, R. Weiss continually diagnosed the plaintiff, requested surgeries and X-rays for the
26 plaintiff, and sent him out for treatment.

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1 Finally, plaintiff is warned that failure to file an amended complaint within the
2 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
3 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
4 with Rule 8 may, in the court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
5 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff's complaint is dismissed with leave to amend;
- 8 2. Plaintiff shall file a first amended complaint within 30 days of the date of
9 service of this order; and
- 10 3. Plaintiff's motion for expedited screening (ECF No. 7) is denied as moot;

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13 Dated: October 4, 2019



14 DENNIS M. COTA
15 UNITED STATES MAGISTRATE JUDGE
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