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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TEVIN LEE HARRIS,
Plaintiff,
v.
R. VALENCIA, et al.,
Defendants.

No. 2: 19-cv-1751 KJN P

ORDER

Introduction

Plaintiff is a state prisoner, proceeding pro se, with a civil rights action pursuant to 42 U.S.C. § 1983. On September 5, 2019, this action was transferred to this court from the Fresno Division of the United States District Court of the Eastern District of California. (ECF No. 16.) In the transfer order, the Fresno Court addressed plaintiff’s second amended complaint. (Id.) The Fresno Court dismissed the claims arising at California State Prison-Corcoran (“Corcoran”) without leave to amend. (Id.) The Fresno Court transferred the claims arising at California State Prison-Sacramento (“CSP-Sac”) to this court. (Id.) Plaintiff alleges violations of his Eighth Amendment right to adequate medical and mental health care at CSP-Sac.

On August 29, 2019, plaintiff filed a notice of change of address stating that he was temporarily housed at the Los Angeles County Jail. (ECF No. 15.) Plaintiff requested that this action be stayed because he had to return to the Los Angeles County Jail on October 25, 2019, for

1 a Franklin hearing.¹ Plaintiff requested that this action be stayed pending resolution of the
2 Franklin hearing.

3 On December 30, 2019, plaintiff filed a notice stating that he was still housed at the Los
4 Angeles County Jail. (ECF No. 18.) Plaintiff also states that he no longer wishes to stay this
5 action. (Id.) Accordingly, the undersigned herein screens plaintiff's second amended complaint.

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

11 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
12 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
13 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
14 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
15 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
16 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
17 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
18 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
19 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at
20 1227.

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

27 ¹ It appears that plaintiff is referring to a hearing pursuant to People v. Franklin, 63 Cal.4th 261
28 (2016), under which a prisoner may make a record of information relevant to his eventual youth
offender parole hearing.

1 formulaic recitation of the elements of a cause of action;” it must contain factual allegations
2 sufficient “to raise a right to relief above the speculative level.” Id. at 555. However, “[s]pecific
3 facts are not necessary; the statement [of facts] need only ‘give the defendant fair notice of what
4 the . . . claim is and the grounds upon which it rests.’” Erickson v. Pardus, 551 U.S. 89, 93
5 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal quotations marks omitted).
6 In reviewing a complaint under this standard, the court must accept as true the allegations of the
7 complaint in question, Erickson, 551 U.S. at 93, and construe the pleading in the light most
8 favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other
9 grounds, Davis v. Scherer, 468 U.S. 183 (1984).

10 Legal Standard for Eighth Amendment Claim

11 The Eighth Amendment is violated only when a prison official acts with deliberate
12 indifference to an inmate’s serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th
13 Cir. 2012), overruled in part on other grounds, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th
14 Cir. 2014); Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006). To state a claim a plaintiff “must
15 show (1) a serious medical need by demonstrating that failure to treat [his] condition could result
16 in further significant injury or the unnecessary and wanton infliction of pain,” and (2) that “the
17 defendant’s response to the need was deliberately indifferent.” Wilhelm v. Rotman, 680 F.3d
18 1113, 1122 (9th Cir. 2012) (citing Jett, 439 F.3d at 1096). “Deliberate indifference is a high legal
19 standard,” Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004), and is shown by “(a) a
20 purposeful act or failure to respond to a prisoner’s pain or possible medical need, and (b) harm
21 caused by the indifference.” Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d at 1096). The
22 requisite state of mind is one of subjective recklessness, which entails more than ordinary lack of
23 due care. Snow, 681 F.3d at 985 (citation and quotation marks omitted).

24 Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this cause of
25 action.” Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle v.
26 Gamble, 429 U.S. 97, 105-06 (1976)).

27 Further, “[a] difference of opinion between a physician and the prisoner—or between
28 medical professionals—concerning what medical care is appropriate does not amount to

1 deliberate indifference.” Snow, 681 F.3d at 987 (citing Sanchez v. Vild, 891 F.2d 240, 242 (9th
2 Cir. 1989)). Rather, a plaintiff is required to show that the course of treatment selected was
3 “medically unacceptable under the circumstances” and that the defendant “chose this course in
4 conscious disregard of an excessive risk to plaintiff’s health.” Snow, 681 F.3d at 988 (quoting
5 Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996)).

6 Legal Standard for Linking Defendants to Alleged Deprivations

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 deprivation
10 of any rights, privileges, or immunities secured by the Constitution .
11 . . shall be liable to the party injured in an action at law, suit in equity,
12 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. Department of Social Servs., 436 U.S. 658 (1978) (“Congress did not intend § 1983
16 liability to attach where . . . causation [is] absent.”); Rizzo v. Goode, 423 U.S. 362 (1976) (no
17 affirmative link between the incidents of police misconduct and the adoption of any plan or policy
18 demonstrating their authorization or approval of such misconduct). “A person ‘subjects’ another
19 to the deprivation of a constitutional right, within the meaning of § 1983, if he does an affirmative
20 act, participates in another’s affirmative acts or omits to perform an act which he is legally
21 required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy, 588
22 F.2d 740, 743 (9th Cir. 1978).

23 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of
24 their employees under a theory of respondeat superior and, therefore, when a named defendant
25 holds a supervisory position, the causal link between him and the claimed constitutional
26 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979)
27 (no liability where there is no allegation of personal participation); Mosher v. Saalfeld, 589 F.2d
28 438, 441 (9th Cir. 1978) (no liability where there is no evidence of personal participation), cert.
denied, 442 U.S. 941 (1979). Vague and conclusory allegations concerning the involvement of
official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673

1 F.2d 266, 268 (9th Cir. 1982) (complaint devoid of specific factual allegations of personal
2 participation is insufficient).

3 Plaintiff's Claims

4 Named as defendants are CSP-Sac Chief of Mental Health Valencia, CSP-Sac Psychiatrist
5 Swartwut, Chief of HCCAB Gates and Supervisor Pleschuk.² (ECF No. 12 at 3.)

6 Plaintiff alleges that he was forced to live in hazardous, inhumane and unsafe conditions
7 in the "PSW" at CSP-Sac from February 2018 to August 2018. (Id.) Plaintiff alleges that he
8 should have been housed in ASU at that time. (Id.) Plaintiff alleges that while he was housed in
9 PSW, he showed many signs of mental illness, psychosis, depression, etc. (Id.) Plaintiff alleges
10 that he expressed his concerns in writing to defendants Valencia, Swartwut, Gates and Pleschuk,
11 via grievances. (Id.)

12 Plaintiff alleges that he informed defendants that he suffered feelings of deterioration, pain
13 and suffering and being unsafe. (Id.) Plaintiff alleges that he had these feelings due to constant
14 cell and tier fires, smoke inhalation, unprotected contact with other inmates' human waste, blood
15 and feces and toilet water flooding. (Id. at 4.) Plaintiff alleges that no defendant attempted to
16 remove him from these unconstitutional conditions of confinement. (Id.) Plaintiff alleges that as
17 a result of being housed in these conditions, he suffered mental deterioration, emotional distress, a
18 scar on his left wrist after stitches were removed, etc. (Id.)

19 Plaintiff goes on to cite several grievances attached to his second amended complaint
20 which he alleges informed defendants of the alleged deprivations. The undersigned discusses
21 these grievances herein.

22 *SAC P-18-1227*

23 In grievance SAC-P-18-1227, plaintiff wrote that he was housed in an inhumane
24 environment. (Id. at 9.) Plaintiff wrote that he had been battered by Correctional Officer Ehers,
25 Lao and Rodriguez. (Id.) Plaintiff also wrote that he was left in small cages for sixteen to twenty

26 ² Also named as defendants in the second amended complaint are Corcoran Deputy Warden
27 Hence, Corcoran Warden Clark, Corcoran Supervisor Kyle and Corcoran Sergeant Burnes. (ECF
28 No. 12 at 3.) The undersigned does not address any claims made against these defendants in the
second amended complaint because plaintiff's claims concerning Corcoran have been dismissed.

1 hours at a time with no restroom breaks or food. (Id. at 11.) Plaintiff also claimed that custody
2 would not allow plaintiff to speak to doctors. (Id.)

3 Grievance SAC-P-18-1227 was bypassed at the first level of review and granted in part at
4 the second level of review. (Id. at 10.) The exhibits attached to the second amended complaint
5 do not demonstrate that any defendant responded to this grievance. Accordingly, the undersigned
6 finds that grievance SAC-P-18-1227 does not link any defendant to the alleged deprivations.

7 *SAC-P-18-1409*

8 In SAC-P-1409, plaintiff alleged a delay in having stitches removed. (Id. at
9 15.) The exhibits attached to the second amended complaint do not demonstrate that any
10 defendant responded to this grievance. Accordingly, the undersigned finds that grievance SAC-
11 P-1227 does not link any defendant to the alleged deprivations.

12 *SAC-P-18-2793*

13 In SAC-P-18-2793, plaintiff wrote that custody and mental health staff were refusing to
14 provide him with any health care. (Id. at 39.) Plaintiff wrote that suicidal inmates were setting
15 fires. (Id.) The exhibits attached to the second amended complaint do not demonstrate that any
16 defendant responded to this grievance. Accordingly, the undersigned finds that grievance SAC-
17 P-18-2793 does not link any defendant to the alleged deprivations.

18 *SAC-P-18-1644*

19 In SAC-P-18-1644, plaintiff wrote that he was being tortured and that prison officials
20 were conspiring to kill him. (Id. at 45.) The exhibits attached to the second amended complaint
21 do not demonstrate that any defendant responded to this grievance. Accordingly, the undersigned
22 finds that grievance SAC-P-18-1644 does not link any defendant to the alleged deprivations.

23 *SAC-HC-18001062*

24 In SAC-HC-18001062, signed by plaintiff on May 1, 2018, plaintiff wrote that he
25 persistently asked the psych tech to remove the stitches, which had been in his left wrist for a long
26 time. (Id. at 17.) Plaintiff wrote that the stitches hindered his ability to take a shower and
27 irritated his skin. (Id.) Plaintiff also asked to speak to a psychologist because he was
28 overwhelmed by thoughts of fear and suicidal ideations. (Id. at 19.) Plaintiff alleged that he

1 received inadequate mental health treatment. (Id.) Plaintiff alleged that custody and mental
2 health staff conspired to provide him with inadequate mental health treatment. (Id.) Plaintiff
3 alleged that Dr. Thayer told him, for his own good, to request a lower level of care. (Id.) Plaintiff
4 claimed that Dr. Thayer told him that “if his looks haven’t helped to better my mental illness then
5 he don’t know what will.” (Id.) This grievance contains the signatures of defendants Valencia
6 and Pleschek at the Institutional Level of review, indicating that plaintiff’s grievance was
7 accepted. (Id. at 17.)

8 On June 21, 2018, defendant Swartwut issue an Institutional Response to grievance SAC-
9 HC-18001062 finding that no intervention was required. (Id. at 23, 31.) The response states that
10 plaintiff raised two issues in the grievance: inadequate mental health care and a request for a
11 lower level of care. (Id. at 23.) Defendant Swartwut wrote, in relevant part,

12 On March 28, 2018 you were evaluated for Suicide Risk,
13 documentation noted that you said, “I’m not suicidal, I just wanted
14 to go get a new wrap for my wrist. I had stitches yesterday they did
15 a video and tied a knot with the gauze and now it’s loose and falling
16 off.” The clinician evaluating you that day noted that you were not
17 a risk to yourself or others and cleared you to return to housing.

18 (Id. at 31.)

19 In his appeal to the Headquarters Level, plaintiff wrote that he was not seeking a lower
20 level of care. (Id. at 19.) Attached as an exhibit to the second amended complaint is the
21 Headquarters’ Level response to grievance SAC-HC-18001062. (Id. at 21.) It is not clear who
22 prepared this response. However, this response addresses plaintiff’s claim regarding the failure to
23 have his stitches removed and his claim alleging inadequate mental health treatment. (Id.)
24 Regarding the stitches, the responses states that plaintiff received an evaluation for a requested
25 dressing change to his left wrist on March 28, 2018. (Id.) “The affected area was assessed and
26 visit notes recorded no redness, swelling, discharge or odor present, with sutures intact.” (Id.)
27 “The area was cleaned with ointment applied and covered with gauze dressing.” (Id.) “It was
28 noted that there was not an order for suture removal at that time.” (Id.) Plaintiff was scheduled
for suture removal on March 30, 2018, but refused the appointment. (Id.) The sutures were
removed on April 2, 2018. (Id.) The wound showed no signs of infection. (Id.)

1 Regarding plaintiff's claims alleging inadequate mental health care, the Headquarters
2 Level responses stated that plaintiff was currently enrolled in the Mental Health Services Delivery
3 System at the Mental Health Crisis Bed Level of care. (Id.) "You have been provided with the
4 opportunity to access mental health services and clinical staff regarding your health care
5 grievance issues." (Id.) "

6 Three defendants are identified in responses to grievance SAC-HC-18001062: Valencia,
7 Pleschek and Swartwut. However, it appears that only defendant Swartwut reviewed and
8 responded to this grievance. Therefore, it is not clear how plaintiff is alleging defendants
9 Valencia and Pleschek violated his Eighth Amendment rights based on their limited involvement
10 in the processing of grievance SAC-HC-18001062. Accordingly, the claims against defendants
11 Valencia and Pleschek based on this grievance are dismissed with leave to amend.

12 In responding to grievance SAC-HC-18001062, defendant Swartwut only addressed
13 plaintiff's claims alleging inadequate mental health care and did not address plaintiff's claim
14 requesting removal of stitches. However, it is clear that by the time defendant Swartwut issued
15 his response to this grievance, plaintiff's stitches had been removed. For this reason, defendant
16 Swartwut's failure to respond to plaintiff's request for removal of his stitches did not constitute
17 deliberate indifference.

18 As discussed above, in his Headquarters Level grievance, plaintiff stated that he was not
19 requesting a lower level of care, as he had requested in the Institutional Level grievance
20 addressed to defendant Swartwut. Accordingly, the undersigned finds that plaintiff is not
21 claiming that defendant Swartwut improperly denied his request for a lower level of care.

22 Based on the discussion above, the undersigned finds that the only claim plaintiff makes
23 against defendant Swartwut in connection with his response to grievance SAC-HC-18001062 is
24 that defendant Swartwut acted with deliberate indifference to his claims alleging inadequate
25 mental health care. Plaintiff requested that he be seen by a psychologist and claimed that staff
26 were conspiring to deny him mental health treatment.

27 Although the undersigned cannot determine when the Headquarters Level response to
28 grievance SAC-HC-18001062 was issued, this response states that plaintiff was in the Mental

1 Health Crisis Bed Level of Care with access to mental health services. Based on this
2 circumstance, it does not appear that staff were denying plaintiff access to mental health
3 treatment, including access to a psychologist. Accordingly, this claim is dismissed with leave to
4 amend. If plaintiff files an amended complaint, he shall explain in detail how defendant
5 Swartwut's institutional level decision that grievance SAC-HC-18001062 required no
6 intervention constituted deliberate indifference.

7 *SAC HC-1800779*

8 In grievance SAC HC-1800779, signed February 4, 2018, plaintiff wrote that he was
9 paranoid, hearing many different threatening voices and having racing thoughts. (Id. at 25.)
10 Plaintiff wrote the mental health treatment he received at CSP-Sac was inadequate. (Id.) Plaintiff
11 wrote that his requests for "PIP" care were denied. (Id.)

12 On April 20, 2018, defendant Valencia responded to SAC HC-1800779. (Id. at 29-30.)
13 Defendant Valencia described plaintiff's grievances as raising the following issues: failure to
14 receive adequate mental health treatment, plaintiff did not want to take his mental health
15 medication, plaintiff was denied PIP, and plaintiff would like to transfer to a different institution.
16 (Id. at 29.)

17 In response to grievance SAC HC-1800779, defendant Valenica wrote,

18 You were placed at the EOP LOC and MHC B LOC since you
19 authored this grievance. As such, you have been receiving the
20 appropriate treatment at each of those levels of care based on
Program Guide Guidelines.

21 You were not currently prescribed psychotropic medication at the
22 time of this writing. You have been seen multiple times by an
23 MHMD since writing this grievance. You were able to voice your
24 concerns about not wanting to take medications for Mental Health
reasons. Your concerns were heard and no medications were
prescribed. Additionally, you have not been assessed for meeting
PC2602 criteria, nor has a judge determined you to be in need of
PC2602.

25 You were placed in a higher Level of Care (LOC), MHC B, the day
26 after authoring this grievance; however, it was determined that you
27 did not need Psychiatric Inpatient Program (PIP) LOC at that time.
28 Additionally, you have been seen for two IDTTs since you wrote the
grievance and neither interdisciplinary team concluded that you
needed the PIP placement. You will continually be assessed during
your 1:1 appointments and IDTT meetings for the appropriate LOC.

1 (Id. at 30.)

2 It does not appear that plaintiff submitted grievance HC HC-1800779 to the Headquarters
3 Level after receiving defendant Valencia's Institutional Level response.

4 It is not clear how plaintiff is alleging that defendant Valencia's response demonstrated
5 deliberate indifference to plaintiff's mental health needs. Defendant Valencia noted that plaintiff
6 had been placed at the EOP LOC and MHCB LOC since authoring the grievance. Defendant
7 Valencia stated that plaintiff was not taking psychotropic medications, per his request in the
8 grievance. Defendant Valencia stated that it was determined that plaintiff did not qualify for the
9 PIP program. On its face, this response does not demonstrate that defendant Valencia acted with
10 deliberate indifference to plaintiff's mental health needs. Accordingly, this claim is dismissed
11 with leave to amend.

12 Conclusion

13 Plaintiff's second amended complaint is dismissed with thirty days leave to file a third
14 amended complaint.

15 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
16 about which he complains resulted in a deprivation of plaintiff's constitutional rights. See, e.g.,
17 West v. Atkins, 487 U.S. 42, 48 (1988). Also, the complaint must allege in specific terms how
18 each named defendant is involved. Rizzo v. Goode, 423 U.S. 362, 371 (1976). There can be no
19 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a
20 defendant's actions and the claimed deprivation. Rizzo, 423 U.S. at 371; May v. Enomoto, 633
21 F.2d 164, 167 (9th Cir. 1980). Furthermore, vague and conclusory allegations of official
22 participation in civil rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266,
23 268 (9th Cir. 1982).

24 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
25 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
26 complaint be complete in itself without reference to any prior pleading. This requirement exists
27 because, as a general rule, an amended complaint supersedes the original complaint. See Ramirez
28 v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) ("an 'amended complaint

1 supersedes the original, the latter being treated thereafter as non-existent.” (internal citation
2 omitted)). Once plaintiff files an amended complaint, the original pleading no longer serves any
3 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim
4 and the involvement of each defendant must be sufficiently alleged.

5 In accordance with the above, IT IS HEREBY ORDERED that:

6 1. Plaintiff’s second amended complaint is dismissed;


7 2. Within thirty days from the date of this order, plaintiff shall complete the attached
8 Notice of Amendment and submit the following documents to the court:

9 a. The completed Notice of Amendment; and

10 b. An original and one copy of the Third Amended Complaint.

11 Plaintiff’s third amended complaint shall comply with the requirements of the Civil Rights Act,
12 the Federal Rules of Civil Procedure, and the Local Rules of Practice. The third amended
13 complaint must also bear the docket number assigned to this case and must be labeled “Third
14 Amended Complaint.” Failure to file a third amended complaint in accordance with this order
15 may result in the dismissal of this action.

16 Dated: February 7, 2020

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18 _____
19 KENDALL J. NEWMAN
20 UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TEVIN LEE HARRIS,
Plaintiff,
v.
R. VALENCIA, et al.,
Defendants.

No. 2: 19-cv-1751 KJN P

NOTICE OF AMENDMENT

Plaintiff hereby submits the following document in compliance with the court's order
filed _____.

DATED: _____ Third Amended Complaint

Plaintiff