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PAUL WILLIAM MUNSTER.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

No. C 13-3268 NJV (PR)

ORDER OF SERVICE

v

DR. LAPIDS, et. al.,

Defendants.

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Plaintiff, who appears to be a pretrial detainee at Santa Cruz Jail, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. The original complaint was dismissed with leave to amend. Plaintiff has filed an amended complaint.

DISCUSSION

A. Standard of Review

18 Federal courts must engage in a preliminary screening of cases in which prisoners
19 seek redress from a governmental entity or officer or employee of a governmental entity.
20 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and
21 dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may
22 be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at
23 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police*
24 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

25 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of
26 the claim showing that the pleader is entitled to relief." "Specific facts are not necessary;
27 the statement need only ""give the defendant fair notice of what the . . . claim is and the
28 grounds upon which it rests."'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations

1 omitted). Although in order to state a claim a complaint "does not need detailed factual
2 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
3 requires more than labels and conclusions, and a formulaic recitation of the elements of a
4 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
5 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
6 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
7 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
8 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
9 framework of a complaint, they must be supported by factual allegations. When there are
10 well-pleaded factual allegations, a court should assume their veracity and then determine
11 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662,
12 679 (2009).

13 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
14 elements: (1) that a right secured by the Constitution or laws of the United States was
15 violated, and (2) that the alleged deprivation was committed by a person acting under the
16 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

17 **B. Legal Claims**

18 Plaintiff alleges he has been provided inadequate medical care while being held at
19 Santa Cruz Jail.

20 Deliberate indifference to serious medical needs violates the Eighth Amendment's
21 proscription against cruel and unusual punishment.¹ *Estelle v. Gamble*, 429 U.S. 97, 104
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23 ¹ Even though pretrial detainees' claims arise under the Due Process Clause, the
24 Eighth Amendment serves as a benchmark for evaluating those claims. See *Carnell v. Grimm*,
25 74 F.3d 977, 979 (9th Cir. 1996) (8th Amendment guarantees provide minimum standard of
26 care for pretrial detainees). The Ninth Circuit has determined that the appropriate standard
27 for evaluating constitutional claims brought by pretrial detainees is the same one used to
28 evaluate convicted prisoners' claims under the Eighth Amendment. "The requirement of
conduct that amounts to 'deliberate indifference' provides an appropriate balance of the pretrial
detainees' right to not be punished with the deference given to prison officials to manage the
prisons." *Redman v. County of San Diego*, 942 F.2d 1435, 1443 (9th Cir. 1991) (en banc)
(citation omitted).

1 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other*
2 *grounds*, *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc).
3 A determination of "deliberate indifference" involves an examination of two elements: the
4 seriousness of the prisoner's medical need and the nature of the defendant's response to
5 that need. *Id.* at 1059.

6 A "serious" medical need exists if the failure to treat a prisoner's condition could
7 result in further significant injury or the "unnecessary and wanton infliction of pain." *Id.* The
8 existence of an injury that a reasonable doctor or patient would find important and worthy of
9 comment or treatment; the presence of a medical condition that significantly affects an
10 individual's daily activities; or the existence of chronic and substantial pain are examples of
11 indications that a prisoner has a "serious" need for medical treatment. *Id.* at 1059-60.

12 A prison official is deliberately indifferent if he or she knows that a prisoner faces a
13 substantial risk of serious harm and disregards that risk by failing to take reasonable steps
14 to abate it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The prison official must not only
15 "be aware of facts from which the inference could be drawn that a substantial risk of serious
16 harm exists," but he "must also draw the inference." *Id.* If a prison official should have
17 been aware of the risk, but was not, then the official has not violated the Eighth
18 Amendment, no matter how severe the risk. *Gibson v. County of Washoe*, 290 F.3d 1175,
19 1188 (9th Cir. 2002). "A difference of opinion between a prisoner-patient and prison
20 medical authorities regarding treatment does not give rise to a § 1983 claim." *Franklin v.*
21 *Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981).

22 Supervisor defendants are entitled to qualified immunity where the allegations
23 against them are simply "bald" or "conclusory" because such allegations do not "plausibly"
24 establish the supervisors' personal involvement in their subordinates' constitutional wrong,
25 *Iqbal*, 556 U.S. at 675-84 (noting no vicarious liability under Section 1983 or *Bivens*
26 actions), and unfairly subject the supervisor defendants to the expense of discovery and
27 continued litigation, *Henry A. v. Willden*, 678 F.3d 991, 1004 (9th Cir. 2012) (general
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1 allegations about supervisors' oversight responsibilities and knowledge of independent
2 reports documenting the challenged conduct failed to state a claim for supervisor liability).
3 So it is insufficient for a plaintiff only to allege that supervisors knew about the constitutional
4 violation and that they generally created policies and procedures that led to the violation,
5 without alleging "a *specific* policy" or "a *specific* event" instigated by them that led to the
6 constitutional violations. *Hydrick v. Hunter*, 669 F.3d 937, 942 (9th Cir. 2012) (emphasis in
7 original). Under no circumstances is there respondeat superior liability under section 1983.
8 Or, in layman's terms, under no circumstances is there liability under section 1983 solely
9 because one is responsible for the actions or omissions of another. See *Taylor v. List*, 880
10 F.2d 1040, 1045 (9th Cir. 1989).

11 Plaintiff states that he has compression fractures in his vertebrae, sciatica in both
12 legs and a broken ankle. He states that he is in constant pain and has described how Dr.
13 Lapidus has not properly addressed his pain issues and certain pain prescriptions have not
14 been provided that were prescribed by his doctors prior to his detention. He states he has
15 also not been allowed to use an air cast for his leg. These claims against Dr. Lapidus are
16 sufficient to proceed.

17 Plaintiff has failed to provide sufficient allegations against physician's assistant
18 Wilson. Plaintiff states that Wilson has been rude and did not prescribe sufficient dosages
19 of drugs and has failed to provide pain relief. Other than these general allegations plaintiff
20 has failed to describe Wilson's specific actions, despite being informed in the court's initial
21 review that more information was required. These bare allegations are insufficient to state
22 a claim under *Iqbal*. "A claim has facial plausibility when the plaintiff pleads factual content
23 that allows the court to draw the reasonable inference that the defendant is liable for the
24 misconduct alleged." *Iqbal*, 556 U.S., at 678.

25 Plaintiff has also failed to link Defendant Beltz, the medical supervisor, to the alleged
26 inadequate medical care. As noted above, simply that she is a supervisor fails to state a
27 claim against her. That she denied his grievances is also insufficient as there is no
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1 constitutional right to an administrative appeal or grievance system. See *Ramirez v.*
2 *Galaza*, 334 F.3d 850, 860 (9th Cir. 2003).

3 **CONCLUSION**

4 1. All Defendants are **DISMISSED** without prejudice except for Defendant Dr. Terry
5 Lapidis.

6 2. The clerk shall issue a summons and Magistrate Judge jurisdiction consent form
7 and the United States Marshal shall serve, without prepayment of fees, the summons,
8 Magistrate Judge jurisdiction consent form, copies of the amended complaint (Docket No.
9 6) with attachments and copies of this order on Dr. Terry Lapidis at Santa Cruz Jail.

10 3. In order to expedite the resolution of this case, the Court orders as follows:

11 a. No later than sixty days from the date of service, Defendant shall file a
12 motion for summary judgment or other dispositive motion. The motion shall be supported
13 by adequate factual documentation and shall conform in all respects to Federal Rule of
14 Civil Procedure 56, and shall include as exhibits all records and incident reports stemming
15 from the events at issue. If Defendant is of the opinion that this case cannot be resolved by
16 summary judgment, she shall so inform the Court prior to the date his summary judgment
17 motion is due. All papers filed with the Court shall be promptly served on Plaintiff.

18 b. At the time the dispositive motion is served, Defendant shall also serve, on
19 a separate paper, the appropriate notice or notices required by *Rand v. Rowland*, 154 F.3d
20 952, 953-954 (9th Cir. 1998) (en banc), and *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4
21 (9th Cir. 2003). See *Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012) (*Rand* and
22 *Wyatt* notices must be given at the time motion for summary judgment or motion to dismiss
23 for nonexhaustion is filed, not earlier); *Rand* at 960 (separate paper requirement).

24 c. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the
25 Court and served upon Defendant no later than thirty days from the date the motion was
26 served upon him. Plaintiff must read the attached page headed "NOTICE -- WARNING,"
27 which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir.

1 1998) (en banc), and *Klingele v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

2 If Defendant files an unenumerated motion to dismiss claiming that Plaintiff failed to
3 exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a), Plaintiff
4 should take note of the attached page headed "NOTICE -- WARNING (EXHAUSTION),"
5 which is provided to him as required by *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4 (9th
6 Cir. 2003).

7 d. If Defendant wishes to file a reply brief, he shall do so no later than fifteen
8 days after the opposition is served upon her.

9 e. The motion shall be deemed submitted as of the date the reply brief is
10 due. No hearing will be held on the motion unless the court so orders at a later date.

11 4. All communications by Plaintiff with the Court must be served on Defendant, or
12 Defendant's counsel once counsel has been designated, by mailing a true copy of the
13 document to Defendant or Defendant's counsel.

14 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
15 No further Court order under Federal Rule of Civil Procedure 30(a)(2) is required before the
16 parties may conduct discovery.

17 6. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
18 informed of any change of address by filing a separate paper with the clerk headed "Notice
19 of Change of Address." He also must comply with the Court's orders in a timely fashion.
20 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
21 Federal Rule of Civil Procedure 41(b).

22 **IT IS SO ORDERED.**

23 Dated: October 28, 2013.



24 NANDOR J. VADAS
United States Magistrate Judge

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NOTICE -- WARNING (SUMMARY JUDGMENT)

If Defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

5 Rule 56 tells you what you must do in order to oppose a motion for summary
6 judgment. Generally, summary judgment must be granted when there is no genuine issue
7 of material fact--that is, if there is no real dispute about any fact that would affect the result
8 of your case, the party who asked for summary judgment is entitled to judgment as a matter
9 of law, which will end your case. When a party you are suing makes a motion for summary
10 judgment that is properly supported by declarations (or other sworn testimony), you cannot
11 simply rely on what your complaint says. Instead, you must set out specific facts in
12 declarations, depositions, answers to interrogatories, or authenticated documents, as
13 provided in Rule 56(e), that contradict the facts shown in Defendant's declarations and
14 documents and show that there is a genuine issue of material fact for trial. If you do not
15 submit your own evidence in opposition, summary judgment, if appropriate, may be entered
16 against you. If summary judgment is granted, your case will be dismissed and there will be
17 no trial.

NOTICE -- WARNING (EXHAUSTION)

19 If Defendant files an unenumerated motion to dismiss for failure to exhaust, they are
20 seeking to have your case dismissed. If the motion is granted it will end your case.

21 You have the right to present any evidence you may have which tends to show that
22 you did exhaust your administrative remedies. Such evidence may be in the form of
23 declarations (statements signed under penalty of perjury) or authenticated documents, that
24 is, documents accompanied by a declaration showing where they came from and why they
25 are authentic, or other sworn papers, such as answers to interrogatories or depositions.

26 If Defendant files a motion to dismiss and it is granted, your case will be dismissed
27 and there will be no trial.