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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

JEWEL E. DYER,
Plaintiff,
v.
TIMOTHY PEARCE, et. al.,
Defendants.

Case No. 17-cv-2640-NJV (PR)
**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**
Dkt. No. 8

Plaintiff, a detainee, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. The court granted plaintiff's motion to proceed in forma pauperis. (Doc. 9.)

DISCUSSION

Standard of Review

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

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

1 in order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s
2 obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and
3 conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . .
4 Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell*
5 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must
6 proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. The United
7 States Supreme Court has recently explained the “plausible on its face” standard of *Twombly*:
8 “While legal conclusions can provide the framework of a complaint, they must be supported by
9 factual allegations. When there are well-pleaded factual allegations, a court should assume their
10 veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft*
11 *v. Iqbal*, 556 U.S. 662, 679 (2009). To state a claim under 42 U.S.C. § 1983, a plaintiff must
12 allege two essential elements: (1) that a right secured by the Constitution or laws of the United
13 States was violated, and (2) that the alleged deprivation was committed by a person acting under
14 the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

15 **Legal Claims**

16 Plaintiff alleges that he is receiving inadequate medical care, the water in the jail is giving
17 him a rash and adversely affecting his health and he is being denied access to the courts.

18 Deliberate indifference to serious medical needs violates the Eighth Amendment’s
19 proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976);
20 *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds*, *WMX*
21 *Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). A determination of
22 “deliberate indifference” involves an examination of two elements: the seriousness of the
23 prisoner’s medical need and the nature of the defendant’s response to that need. *Id.* at 1059.¹

24
25 ¹ It appears that plaintiff is a pretrial detainee. Even though pretrial detainees’ claims arise under
26 the Due Process Clause, the Eighth Amendment serves as a benchmark for evaluating those
27 claims. *See Carnell v. Grimm*, 74 F.3d 977, 979 (9th Cir. 1996) (8th Amendment guarantees
28 provide minimum standard of care for pretrial detainees). The Ninth Circuit has determined that
the appropriate standard for evaluating constitutional claims brought by pretrial detainees is the
same one used to 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

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

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

16 Inmates who sue prison officials for injuries suffered while in custody may do so under the
17 Eighth Amendment’s Cruel and Unusual Punishment Clause or, if not yet convicted, under the
18 Fourteenth Amendment’s Due Process Clause. See *Bell v. Wolfish*, 441 U.S. 520, 535 (1979);
19 *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1067-68 (9th Cir. 2016) (en banc). But under both
20 clauses, the inmate must show that the prison official acted with deliberate indifference. Id. at
21 1068.

22 Prisoners have a constitutional right of access to the courts. *See Lewis v. Casey*, 518 U.S.
23 343, 350 (1996); *Bounds v. Smith*, 430 U.S. 817, 821 (1977). To establish a claim for any
24 violation of the right of access to the courts, the prisoner must prove that there was an inadequacy
25 in the prison’s legal access program that caused him an actual injury. *See Lewis*, 518 U.S. at 350-
26 55. To prove an actual injury, the prisoner must show that the inadequacy in the prison’s program

27
28 manage the prisons.” *Redman v. County of San Diego*, 942 F.2d 1435, 1443 (9th Cir. 1991) (en
banc) (citation omitted).

1 hindered his efforts to pursue a non-frivolous claim concerning his conviction or conditions of
2 confinement. *See id.* at 354-55.

3 Plaintiff states that he has been refused treatment, however he fails to discuss what
4 treatment was refused and the underlying medical problems. He has also failed to identify the
5 actions of any specific defendants. Similarly, plaintiff states that he was denied access to the
6 courts, but fails to provide any details. Nor has he provided specific allegations regarding how the
7 facility water is harming him and what if any steps he has taken in discussing this with jail
8 officials. The complaint is dismissed with leave to amend. Plaintiff must provide more details
9 and describe who specific individuals violated his constitutional rights. Conclusory allegations
10 with no support are insufficient.

11 **CONCLUSION**

12 1. The complaint is **DISMISSED** with leave to amend in accordance with the standards set
13 forth above. The amended complaint must be filed within **twenty-eight (28) days** of the date this
14 order is filed and must include the caption and civil case number used in this order and the words
15 AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces
16 the original complaint, plaintiff must include in it all the claims he wishes to present. *See Ferdik*
17 *v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the
18 original complaint by reference. Failure to amend within the designated time will result in the
19 dismissal of this case.

20 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court
21 informed of any change of address by filing a separate paper with the clerk headed "Notice of
22 Change of Address," and must comply with the court's orders in a timely fashion. Failure to do so
23 may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil
24 Procedure 41(b).

25 **IT IS SO ORDERED.**

26 Dated: July 27, 2017

27 
28 NANDOR J. VABAS
United States Magistrate Judge