

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
NORTHERN DISTRICT OF CALIFORNIA

FREDDIE FERNANDO WORTHAM, et
al.,

Plaintiffs,

v.

J. WALDURA, MD, et al.,

Defendants.

Case No. [20-cv-05394-RMI](#)

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Plaintiff, a detainee, filed a *pro se* civil rights complaint under 42 U.S.C. § 1983. The original complaint (dkt. 1) was dismissed with leave to amend and Plaintiff has filed an amended complaint (dkt. 11).

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. Detailed facts are not necessary; the statement need only give a defendant fair notice of the nature of the claim and the grounds upon which it

1 rests. *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). While a complaint “does not need detailed
2 factual allegations . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to
3 relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a
4 cause of action will not do . . . [instead, the] [f]actual allegations must be enough to raise a right to
5 relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
6 (citations omitted). A complaint, therefore, must proffer “enough facts to state a claim to relief that
7 is plausible on its face.” *Id.* at 570. The Supreme Court has explained the “plausible on its face”
8 standard of *Twombly* as such: “[w]hile legal conclusions can provide the framework of a
9 complaint, they must be supported by factual allegations. When there are well-pleaded factual
10 allegations, a court should assume their veracity and then determine whether they plausibly give
11 rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

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

16 Legal Claims

17 Plaintiff alleges that he received inadequate medical care at Santa Rita Jail. A claim for a
18 violation of a pretrial detainee’s right to adequate medical care arises under the Fourteenth
19 Amendment rather than the Eighth Amendment. *See Gordon v. County of Orange*, 888 F.3d 1118,
20 1122 & n.4 (9th Cir. 2018). The claim is evaluated under an objective deliberate indifference
21 standard.

22 [T]he elements of a pretrial detainee’s medical care claim against an
23 individual defendant under the due process clause of the Fourteenth
24 Amendment are: (i) the defendant made an intentional decision with
25 respect to the conditions under which the plaintiff was confined; (ii)
26 those conditions put the plaintiff at substantial risk of suffering
27 serious harm; (iii) the defendant did not take reasonable available
28 measures to abate that risk, even though a reasonable official in the
circumstances would have appreciated the high degree of risk
involved—making the consequences of the defendant’s conduct
obvious; and (iv) by not taking such measures, the defendant caused
the plaintiff’s injuries.

Id. at 1125. With regard to the third element, a defendant’s conduct must be objectively

1 unreasonable – “a test that will necessarily ‘turn[] on the facts and circumstances of each
2 particular case.’” *Id.* (citation omitted). The four-part test described in *Gordon* requires plaintiffs
3 to prove more than negligence, but less than subjective intent – something akin to reckless
4 disregard. *Id.*

5 In a § 1983 or a *Bivens* action – where employers and supervisors are not made to
6 automatically answer for the torts of their employees and subordinates – the term ‘supervisory
7 liability’ is a misnomer. Absent vicarious liability, each government official, his or her title
8 notwithstanding, is only liable for his or her own misconduct.” *Iqbal*, 556 U.S. at 677 (finding
9 under *Twombly*, 550 U.S. at 544, and Rule 8 of the Federal Rules of Civil Procedure, that
10 complainant-detainee in a *Bivens* action failed to plead sufficient facts “plausibly showing” that
11 top federal officials “purposely adopted a policy of classifying post-September-11 detainees as ‘of
12 high interest’ because of their race, religion, or national origin” over more likely and non-
13 discriminatory explanations).

14 A supervisor may be liable under § 1983 upon a showing of (1) personal involvement in
15 the constitutional deprivation or (2) a sufficient causal connection between the supervisor’s
16 wrongful conduct and the constitutional violation. *Henry A. v. Willden*, 678 F.3d 991, 1003-04
17 (9th Cir. 2012). Even if a supervisory official is not directly involved in the allegedly
18 unconstitutional conduct, “[a] supervisor can be liable in this individual capacity for his own
19 culpable action or inaction in the training, supervision, or control of his subordinates; for his
20 acquiescence in the constitutional deprivation; or for conduct that showed a reckless or callous
21 indifference to the rights of others.” *Starr v. Baca*, 652 F.3d 1202, 1208 (9th Cir. 2011) (citation
22 omitted). The claim that a supervisory official “knew of unconstitutional conditions and ‘culpable
23 actions of his subordinates’ but failed to act amounts to ‘acquiescence in the unconstitutional
24 conduct of his subordinates’ and is ‘sufficient to state a claim of supervisory liability.’” *Keates v.*
25 *Koile*, 883 F.3d 1228, 1243 (9th Cir. 2018) (quoting *Starr*, 652 F.3d at 1208) (finding that
26 conclusory allegations that supervisor promulgated unconstitutional procedures which authorized
27 unconstitutional conduct of subordinates do not suffice to state a claim of supervisory liability).

28

1 In the original complaint, Plaintiff stated that he arrived at Santa Rita Jail and spoke with
2 an intake nurse. He informed the nurse that he was not allergic to any medication but was allergic
3 to shellfish. He was given either a multivitamin or an aspirin and the following day he had
4 swelling in his face and neck. He was then seen by medical staff who gave him an injection. The
5 next day, the swelling had still not subsided, so he was taken to an outside hospital where he was
6 treated and then released when the swelling dissipated. Plaintiff alleges that the nurse who gave
7 him the pill, as well as various other medical personnel and guards, violated his Fourteenth
8 Amendment rights due to the allergic reaction he reportedly suffered. It appears that Plaintiff is
9 also allergic to Lisinopril and he argues that Defendants should have informed him of the risks of
10 taking the pill due to adverse effects for African Americans and those who are diabetic and suffer
11 from high blood pressure.

12 The original complaint was dismissed with leave to amend to provide more detailed
13 information. Plaintiff has refiled the original complaint and separately noted that he never told the
14 intake nurse that he was not allergic to medication. However, Plaintiff has failed to address the
15 other deficiencies previously noted by the court. The amended complaint is therefore dismissed
16 with leave to amend such that Plaintiff can address those deficiencies.

17 Plaintiff is again reminded that to state a cognizable Fourteenth Amendment claim in this
18 context, a plaintiff must demonstrate that the Defendants' actions were more than merely negligent
19 – he must demonstrate that they were objectively unreasonable. In this case, Plaintiff must show
20 how Defendants should have known that he had an allergy, as it appears that even Plaintiff was
21 unaware. In addition, Plaintiff must present additional allegations showing how the other
22 Defendants were involved and how each of their actions violated his constitutional rights. Merely
23 because a Defendant happens to be a supervisor, or when a Defendant had some minimal
24 involvement with this incident, is insufficient to state a claim under the standards described above.
25 Plaintiff must file an entirely new complaint containing all his allegations in light of the standards
26 and directions provided herein.

27 //

28 //

1 **CONCLUSION**

2 It is hereby **ORDERED** that:

3 1. The Clerk of Court shall remove the second plaintiff, Josh Blake, from the docket of
4 this case as Plaintiff states that the name was mistakenly added to the caption of his complaint.

5 2. The amended complaint is **DISMISSED** with leave to amend in accordance with the
6 standards set forth above. The second amended complaint must be filed within **twenty-eight (28)**
7 **days** of the date this order is served and must include the caption and civil case number used in
8 this order. Plaintiff’s amended pleading must be entitled with the words, “SECOND AMENDED
9 COMPLAINT,” on the first page. Because an amended complaint completely replaces the original
10 complaint, Plaintiff must include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*,
11 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original complaint
12 by reference. Failure to amend within the designated time may result in the dismissal of this case.

13 3. It is Plaintiff’s responsibility to prosecute this case. Plaintiff must keep the court
14 informed of any change of address by filing a separate paper with the clerk entitled, “Notice of
15 Change of Address,” and must comply with the court’s orders in a timely fashion. Failure to do so
16 may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil
17 Procedure 41(b).

18 **IT IS SO ORDERED.**

19 Dated: November 16, 2020

20 

21 _____
22 ROBERT M. ILLMAN
23 United States Magistrate Judge

United States District Court
Northern District of California