

E-Filed 10/4/10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISIONALEJANDRO GONZALEZ,
Plaintiff,

No. C 10-2221 RS (PR)

ORDER OF DISMISSAL

v.

JOSEPH CHUDY,
Defendant.

This is a federal civil rights action filed by a *pro se* state prisoner pursuant to 42 U.S.C. § 1983 against defendant, Chief Medical Officer at Soledad State Prison. The original complaint was dismissed with leave to amend. Plaintiff has filed an amended complaint. The Court now reviews the amended complaint pursuant to 28 U.S.C. § 1915A(a).

DISCUSSION**I. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that 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. *See id.* § 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

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1 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim
2 to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)
3 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
4 plausibility when the plaintiff pleads factual content that allows the court to draw the
5 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting
6 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal
7 conclusions cast in the form of factual allegations if those conclusions cannot reasonably be
8 drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th
9 Cir. 1994). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
10 elements: (1) that a right secured by the Constitution or laws of the United States was
11 violated, and (2) that the alleged violation was committed by a person acting under the color
12 of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

13 II. Claims

14 Plaintiff alleges that defendant Dr. Joseph Chudy, Chief Medical Officer at Soledad
15 State Prison, was deliberately indifferent to his medical needs in violation of the Eighth
16 Amendment when he (Chudy) denied plaintiff’s administrative appeal. The appeal was
17 based on an incident wherein plaintiff told a prison nurse, who had just delivered plaintiff’s
18 medication, that he had had rectal bleeding. Plaintiff was taken to the clinic and offered
19 treatment, but plaintiff refused to pay a \$5.00 co-pay and left the clinic without receiving
20 treatment. Some time later, another prison nurse interviewed plaintiff. At that time, plaintiff
21 made no mention of any rectal bleeding, though Chudy’s report indicates that plaintiff had, a
22 month before this interview, filed a health care request regarding that condition.

23 A prison official violates the Eighth Amendment when two requirements are
24 met: (1) the deprivation alleged must be, objectively, sufficiently serious, *see Farmer v.*
25 *Brennan*, 511 U.S. 825, 834 (1994) (citing *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)), and
26 (2) the prison official possesses a sufficiently culpable state of mind, i.e., the offending
27 conduct was wanton, *id.* (citing *Wilson*, 501 U.S. at 297).


1 In determining whether a deprivation of a basic necessity is sufficiently serious to
2 satisfy the objective first component of an Eighth Amendment claim, a court must consider
3 the circumstances, nature, and duration of the deprivation. The more basic the need, the
4 shorter the time it may be withheld. *See Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir.
5 2000). A prison official cannot be held liable under the Eighth Amendment for denying an
6 inmate humane conditions of confinement unless the standard for criminal recklessness is
7 met, i.e., the official knows of and disregards an excessive risk to inmate health or safety.
8 *See Farmer*, 511 U.S. at 837.

9 Under this standard, the complaint does not contain sufficient factual matter, accepted
10 as true, to state a claim to relief that is plausible on its face. First, plaintiff has not shown that
11 there was a deprivation of treatment. He was sent to the clinic after one complaint, but
12 refused treatment by refusing to pay the co-pay. His refusal of treatment does not constitute
13 a deprivation by defendant. Also, he was further interviewed by staff regarding his health,
14 yet failed to mention the medical conditions he complains about here. Without proper and
15 clear notice, staff could not have properly treated plaintiff. Second, he has not shown that
16 even if there was a deprivation, that it was sufficiently serious in that his symptoms
17 represented an imminent need for medical attention. Third, plaintiff has not shown that
18 defendant possessed the necessary state of mind. Faced with the record of plaintiff's refusing
19 treatment, and not mentioning the bleeding to an inquiring official, the Court cannot say that
20 plaintiff has shown that defendant knew of a serious risk to plaintiff's health and ignored it.
21 Accordingly, the complaint is DISMISSED, plaintiff having failed to state a claim for relief.

22 The Clerk shall enter judgment in favor of defendant, and close the file.

23 **IT IS SO ORDERED.**

24 DATED: October 4, 2010


RICHARD SEEBORG
United States District Judge