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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GEORGE EDWARD FERGUSON,
Plaintiff,
v.
S. STEINHAUS, et al.,
Defendants.

Case No. 16-cv-06417-JST (PR)

ORDER OF DISMISSAL

INTRODUCTION

Plaintiff, a California prisoner incarcerated at the Correctional Training Facility (CTF), filed this pro se civil rights action pursuant to 42 U.S.C. § 1983, alleging claims for deliberate indifference to serious medical needs against two CTF doctors. The Court identified various deficiencies in plaintiff's complaint and dismissed it with leave to amend. Plaintiff has filed an amended complaint (FAC), in which he no longer names the doctor defendants but instead names two CTF nurses as defendants. The FAC is now before the Court for review under 28 U.S.C. § 1915A.

BACKGROUND

The following allegations are taken from the FAC:

On November 5, 2015, while in class, plaintiff began experiencing severe abdominal pain and vomiting. His instructor directed him to return to his housing unit. His housing unit floor officer then directed plaintiff to report to Central Medical. Defendant Nurse Steinhaus attended to plaintiff and conducted a physical plan. Nurse Steinhaus then consulted with CTF Dr. Mindoro by telephone. Dr. Mindoro ordered a gastrointestinal (GI) cocktail and instructed plaintiff to drink extra fluids, consume light chicken soup, and place a sick call request if symptoms did not resolve

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1 by the next morning.

2 Plaintiff's abdominal pain continued for two more days. On November 7, 2015, he
3 returned to Central Medical, where he was examined by defendant Nurse Mandich. Nurse
4 Mandich consulted with CTF Dr. Branch by telephone. Plaintiff was again given a GI cocktail
5 along with intravenous fluids for dehydration and medication for his diarrhea.

6 On November 9, 2015, plaintiff returned to Central Medical where he was examined by
7 CTF Dr. Sweet. Dr. Sweet ordered x-rays, which showed gallstones. Plaintiff was transported to
8 Natividad Medical Center for surgery.

9 **DISCUSSION**

10 A. Standard of Review

11 A federal court must conduct a preliminary screening in any case in which a prisoner seeks
12 redress from a governmental entity or officer or employee of a governmental entity. See 28
13 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any
14 claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek
15 monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1),
16 (2). Pro se pleadings must, however, be liberally construed. See Balistreri v. Pacifica Police
17 Dep't., 901 F.2d 696, 699 (9th Cir. 1988).

18 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the
19 claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the
20 statement need only " 'give the defendant fair notice of what the . . . claim is and the grounds upon
21 which it rests.' " Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although
22 in order to state a claim a complaint "does not need detailed factual allegations, . . . a plaintiff's
23 obligation to provide the grounds of his 'entitle[ment] to relief' requires more than labels and
24 conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . .
25 Factual allegations must be enough to raise a right to relief above the speculative level." Bell
26 Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint
27 must proffer "enough facts to state a claim for relief that is plausible on its face." Id. at 1974.

28 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:

1 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that
2 the alleged violation was committed by a person acting under the color of state law. See West v.
3 Atkins, 487 U.S. 42, 48 (1988).

4 B. Legal Claims

5 Plaintiff alleges that Nurses Steinhaus and Mandich acted with deliberate indifference to
6 his serious medical needs by failing to fully report plaintiff's symptoms over the telephone to
7 Doctors Mindoro and Branch. Specifically, plaintiff alleges that Nurse Steinhaus described
8 plaintiff's condition as nausea and vomiting but failed to report plaintiff's abdominal pain.
9 Plaintiff similarly alleges that Nurse Mandich "omitted to report her observation of very tender
10 and painful abdominal condition." FAC at 7. This allegation is contradicted by Nurse Mandich's
11 "encounter form," in which she noted that plaintiff had "moderate or severe abdominal pain" as
12 well as "moderate . . . tenderness on palpation." FAC at 21. Even accepting Plaintiff's allegations
13 as true, however, the FAC fails to show that Nurses Steinhaus and Mandich acted with the
14 necessary mental state for deliberate indifference.

15 Deliberate indifference to a prisoner's serious medical needs amounts to the cruel and
16 unusual punishment prohibited by the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 104
17 (1976); Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004); McGuckin v. Smith, 974 F.2d
18 1050, 1059 (9th Cir. 1992), overruled on other grounds by WMX Technologies, Inc. v. Miller, 104
19 F.3d 1133, 1136 (9th Cir. 1997) (en banc). A prison official violates the Eighth Amendment only
20 when two requirements are met: (1) the deprivation alleged is, objectively, sufficiently serious,
21 and (2) the official is, subjectively, deliberately indifferent to the inmate's health or safety.
22 Farmer v. Brennan, 511 U.S. 825, 834 (1994).

23 Neither negligence nor gross negligence warrant liability under the Eighth Amendment.
24 Id. at 835-36 & n4. An "official's failure to alleviate a significant risk that he should have
25 perceived but did not, . . . cannot under our cases be condemned as the infliction of punishment."
26 Id. at 838. Instead, "the official's conduct must have been 'wanton,' which turns not upon its
27 effect on the prisoner, but rather, upon the constraints facing the official." Frost v. Agnos, 152
28 F.3d 1124, 1128 (9th Cir. 1998) (citing Wilson v. Seiter, 501 U.S. 294, 302-03 (1991)). Prison

1 officials violate their constitutional obligation only by “intentionally denying or delaying access to
2 medical care.” Estelle, 429 U.S. at 104-05. A defendant is deliberately indifferent if he knows
3 that a prisoner faces a substantial risk of serious harm and disregards that risk by failing to take
4 reasonable steps to abate it. Farmer, 511 U.S. at 837. The defendant must not only “be aware of
5 facts from which the inference could be drawn that a substantial risk of serious harm exists,” but
6 he “must also draw the inference.” Id.

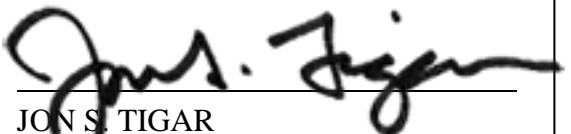
7 Here, plaintiff admits that Nurses Steinhaus and Mandich physically examined him and
8 obtained medications and other treatment from CTF doctors commensurate with his symptoms.
9 He does not allege that the defendant nurses failed to treat him, but only that they downplayed or
10 failed to report one of his symptoms when reporting to the CTF doctors. Nothing in the amended
11 complaint or attached exhibits shows that plaintiff received treatment that was “medically
12 unacceptable under the circumstances” and that defendants embarked on a course of treatment “in
13 conscious disregard of an excessive risk to [plaintiff’s] health.” See Toguchi, 391 F.3d at 1058
14 (citations omitted). Plaintiff describes actions that might constitute at worst negligence or gross
15 negligence, neither of which constitutes deliberate indifference. See Farmer, 511 U.S. at 835-36
16 & n.4.

17 **CONCLUSION**

18 For the foregoing reasons, this case is DISMISSED. Dismissal is without leave to amend
19 because plaintiff has been given an opportunity to amend and it appears that further amendment
20 would be futile. However, dismissal is without prejudice to plaintiff pursuing in state court any
21 claims he may have under state law. The Clerk shall enter judgment in favor of defendants, and
22 close the file.

23 **IT IS SO ORDERED.**

24 Dated: April 5, 2017

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27 JON S. TIGAR
United States District Judge

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