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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES L. STEVENSON,
Plaintiff,
v.
SAN FRANCISCO COUNTY JAIL
MEDICAL SERVICES,
Defendant.

Case No. [17-cv-00336-SI](#)

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Re: Dkt. No. 1

INTRODUCTION

Charles Stevenson, an inmate at the San Francisco County Jail, California, filed a *pro se* civil rights complaint seeking relief under 42 U.S.C. § 1983. The complaint is now before the Court for review under 28 U.S.C. § 1915A.

BACKGROUND

Stevenson alleges the following in his complaint: Since his arrival at the San Francisco County Jail on September 19, 2014, he has gained over 80 pounds. Stevenson now has serious mobility issues, chronic back pain, and experiences pain most of every night. He suffered two compression fractures on his spine in 2011. He has “been denied medication without cause or reason,” denied checkups, and denied chronos for unspecified medical supplies. Docket No. 1 at 3. His inmate appeals are “absent of due process.” *Id.*

1 **DISCUSSION**

2 A federal court must engage in a preliminary screening of any case in which a prisoner
3 seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28
4 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any
5 claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or
6 seek monetary relief from a defendant who is immune from such relief. *See id.* at § 1915A(b).
7 *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d
8 696, 699 (9th Cir. 1990).

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

13
14 A. Inmate Medical Care Claims

15 Stevenson does not allege whether he was a pretrial detainee or had been convicted when
16 the events and omissions giving rise to the complaint occurred. His status affects the analysis of
17 his claims because a convicted prisoner's medical care claim arises under the Eighth Amendment
18 to the U.S. Constitution, whereas a pretrial detainee's medical care claim arises under the
19 Fourteenth Amendment to the U.S. Constitution. Until recently, the standards were considered
20 roughly the same under the Eighth and Fourteenth Amendments, *see generally Carnell v. Grimm*,
21 74 F.3d 977, 979 (9th Cir. 1996), but more recently, the two standards have diverged with respect
22 to the mental state requirement for a defendant. Due to the differences in the Eighth and
23 Fourteenth Amendment claims, an inmate-plaintiff's status at the time of the relevant events must
24 be known because some conduct that violates the Fourteenth Amendment won't violate the Eighth
25 Amendment. If a plaintiff has transitioned from being a pretrial detainee to a convict (or vice-
26 versa), both standards may need to be applied -- with one standard being applied to the events that
27 occurred when the person was a pretrial detainee and a different standard being applied to the
28 events that occurred after he was convicted.

1 Deliberate indifference to a prisoner’s serious medical needs violates the Eighth
2 Amendment. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Toguchi v. Chung*, 391 F.3d 1051,
3 1057 (9th Cir. 2004). A defendant violates the Eighth Amendment only when two requirements
4 are met: (1) the deprivation alleged is, objectively, sufficiently serious, and (2) the official is,
5 subjectively, deliberately indifferent to the inmate’s health or safety. *See Farmer v. Brennan*, 511
6 U.S. 825, 834 (1994). In the medical care context, the prisoner first must identify an objectively
7 serious medical need. *See Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012) (serious
8 medical need exists if “failure to treat a prisoner’s condition could result in further significant
9 injury or the unnecessary and wanton infliction of pain.”) Second, the prisoner must allege that
10 the defendant acted with the requisite mental state of deliberate indifference to a risk to the
11 prisoner’s health. Under the Eighth Amendment standard applicable to prisoner claims, a
12 defendant is deliberately indifferent if he knows that a prisoner faces a substantial risk of serious
13 harm and disregards that risk by failing to take reasonable steps to abate it. *Farmer*, 511 U.S. at
14 837. The defendant must not only “be aware of facts from which the inference could be drawn
15 that a substantial risk of serious harm exists,” but he “must also draw the inference.” *Id.*

16 When a pretrial detainee challenges conditions of his confinement, the proper inquiry is
17 whether the conditions amount to punishment in violation of the Due Process Clause of the
18 Fourteenth Amendment. *See Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979). An inmate claiming
19 that jail officials have responded inadequately to his medical needs while he was a pretrial
20 detainee must establish two elements to state a claim under § 1983. First, he must identify an
21 objectively serious medical need. *See Wilhelm*, 680 F.3d at 1122. Second, he must allege that a
22 defendant acted with the requisite mental state of deliberate indifference to the risk to the inmate’s
23 health. It appears that a pretrial detainee must allege facts to show that a defendant “did not take
24 reasonable measures to abate that risk, even though a reasonable officer in the circumstances
25 would have appreciated the high degree or risk involved--making the consequences of the
26 defendant’s conduct obvious.” *Castro v. County of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir.
27 2016 (en banc), *cert. denied* 2017 WL 276190 (U.S. Jan. 23, 2017).¹

28 ¹ For present purposes, the court assumes that an objective (rather than subjective) standard of

1 A claim of medical malpractice or mere negligence is insufficient to make out a violation
2 of the Eighth Amendment or the Fourteenth Amendment. *See Toguchi*, 391 F.3d at 1060-61;
3 *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002); *Castro*, 833 F.3d at 1071.

4
5 B. Stevenson’s Complaint

6 Although a plaintiff is not required to plead “specific factual details not ascertainable in
7 advance of discovery,” *Gibson v. United States*, 781 F.2d 1334, 1340 (9th Cir. 1986), he does not
8 state a claim under 42 U.S.C. § 1983 if the allegations in the complaint are mere conclusions,
9 *Kennedy v. H & M Landing, Inc.*, 529 F.2d 987, 989 (9th Cir. 1976). A complaint must contain
10 sufficient allegations to put defendants fairly on notice of the claims against them. *McKeever v.*
11 *Block*, 932 F.2d 795, 798 (9th Cir. 1991). A complaint that fails to state the specific acts of the
12 defendant which violated the plaintiff's rights fails to meet the notice requirements of Federal Rule
13 of Civil Procedure 8(a). *Hutchinson v. United States*, 677 F.2d 1322, 1328 n.5 (9th Cir. 1982).

14 Stevenson’s complaint is deficient in several respects. First, as noted above, Stevenson
15 does not allege whether he was a pretrial detainee or a convicted prisoner at the time of the
16 relevant events. He might have been a pretrial detainee for all of the time, some of the time, or

17
18 deliberate indifference applies to medical care claims from pretrial detainees. The court
19 recognizes the law currently is unsettled as to whether an objective or subjective standard of
20 deliberate indifference applies. *Castro* announced the objective standard in a deliberate-
21 indifference-to-safety claim from a pretrial detainee, and the Ninth Circuit has not yet decided
22 whether the same objective standard of deliberate indifference applies to a medical care claim
23 from a pretrial detainee. A recent unpublished decision suggests the issue remains undecided. *See*
24 *Banks v. Castillo*, 2017 WL 784643, *1 (9th Cir. Mar. 1, 2017) (unpublished decision) (summary
25 judgment was proper on a pretrial detainee’s claim of deliberate indifference to medical needs
26 “under any potential potentially applicable standard,” citing *Castro* as well as earlier cases using
27 subjective standard for deliberate indifference claims). Other circuits have taken different
28 approaches. *See Ryan v. Armstrong*, 850 F.3d 419, 425 n.3 (8th Cir. Mar. 7, 2017) (citing *Castro*
and declining to decide whether deliberate indifference test is now an objective test for medical
care claims by pretrial detainees); *Darnell v. Pineiro*, 849 F.3d 17, 35 n.14 (2d Cir. Feb. 21,
2017). (citing *Castro* and holding that objective test for deliberate indifference applies to pretrial
detainees’ claims about conditions of confinement, such as overcrowding, sanitation problems,
and inadequate nutrition)); *Alderson v. Concordia Parish Corr. Facility*, 848 F.3d 415 (5th Cir.
2017) (following Fifth Circuit precedent and declining to adopt objective standard for pretrial
detainee’s claim of deliberate indifference to medical needs). If defendants are ever served with
process, they are free to revisit the issue of whether a subjective or objective standard of deliberate
indifference should apply to a medical care claim from a pretrial detainee, but the court will
assume in the interim that it is an objective standard.

1 none of the time.² In his amended complaint, Stevenson needs to allege whether he was a pretrial
2 detainee or a convict. If he had one custodial status at one time and another custodial status at
3 another time, he should describe the dates during which he was a prisoner and during which he
4 was a pretrial detainee.

5 Second, Stevenson has not described some of his problems with enough detail for the court
6 to determine that there was an objectively serious medical need. Stevenson alleges that he was
7 denied chronos for medical supplies, but he does not describe what those supplies were or the
8 medical need(s) being addressed by the supplies. Also, Stevenson alleges that he has not received
9 medical documents, but he does not allege enough facts (such as what the medical documents
10 were and why he needed them) for the court to determine that the problem is of constitutional
11 dimension. And Stevenson alleges that he has been denied regular check-ups, but does not
12 identify the medical problem he had that warranted a medical check-up.

13 Third, the mental state of deliberate indifference is not adequately pled. It is not a
14 constitutional violation for an inmate to have medical problems, such as obesity or a compression
15 fracture or even chronic pain. The constitutional violation occurs when there is both a medical
16 problem and an inadequate response by jail officials to that problem. The complaint is deficient in
17 that it does allege deliberate indifference by any particular person to a medical problem.
18 Stevenson alleges that some unidentified person(s) on the medical staff did not provide proper
19 medical care, but does not state the dates on which this occurred and does not identify the
20 person(s) on the medical staff who allegedly caused the problem. In order to give the defendant(s)
21 fair notice to enable the defendant(s) to defend against this claim, Stevenson must be more specific
22 as to the dates on which treatment was denied and/or delayed and must link defendants to this
23 claim, as explained below.

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26 ² The California courts' website shows a notice of appeal being filed on September 7,
27 2016, in *People v. Charles Stevenson*, Cal. Ct. App. Case No. A149253, which suggests Stevenson
28 may have been convicted at some point before that date. (The defendant-appellant appears to be
the same person who is the plaintiff in this case; both use the San Francisco County Jail as their
address.) A second, earlier case, also exists for someone named Charles Stevenson: in *People v.*
Charles Stevenson, 2008 WL 2814233 (Cal. Ct. App. 2008), the state appellate court affirmed an
11-year sentence imposed in 2007 upon a guilty plea in the San Francisco County Superior Court.

1 Fourth, there is a defendant problem. The only identified defendant is the “San Francisco
2 County Jail Medical Services,” There is no respondeat superior liability under § 1983, i.e. no
3 liability under the theory that one is liable simply because he employs a person who has violated a
4 plaintiff's rights. *See Monell v. Dep't of Social Servs.*, 436 U.S. 658, 691 (1978); *Taylor v. List*,
5 880 F.2d 1040, 1045 (9th Cir. 1989). Thus, the mere fact that the alleged individual wrongdoer
6 was employed by one institutional defendant would not be a sufficient basis on which to hold the
7 employing institutional defendant liable.

8 Local governments are “persons” subject to liability under 42 U.S.C. § 1983 where official
9 policy or custom causes a constitutional tort, *see Monell*, 436 U.S. at 690. To impose municipal
10 liability under § 1983 for a violation of constitutional rights, a plaintiff must show: (1) that the
11 plaintiff possessed a constitutional right of which he or she was deprived; (2) that the municipality
12 had a policy; (3) that this policy amounts to deliberate indifference to the plaintiff's constitutional
13 rights; and (4) that the policy is the moving force behind the constitutional violation. *See Plumeau*
14 *v. School Dist. #40 County of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997). For municipal liability,
15 a plaintiff must plead sufficient facts regarding the specific nature of the alleged policy, custom or
16 practice to allow the defendant to effectively defend itself, and these facts must plausibly suggest
17 that the plaintiff is entitled to relief. *See AE v. County of Tulare*, 666 F.3d 631, 636-37 (9th Cir.
18 2012). It is not sufficient to merely allege that a policy, custom or practice existed or that
19 individual officers' wrongdoing conduct conformed to a policy, custom or practice. *See id.* at 636-
20 68.

21 If Stevenson wants to add individuals as defendants, he must be careful to allege facts
22 showing the basis for liability for each individual defendant. He should not refer to them as a
23 group (e.g., “the defendants”); rather, he should identify each involved defendant by name and
24 link each of them to his claim by explaining what each defendant did or failed to do that caused a
25 violation of his constitutional rights. *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988)
26 (liability may be imposed on individual defendant under § 1983 only if plaintiff can show that
27 defendant proximately caused deprivation of federally protected right). A supervisor may be
28 liable under § 1983 upon a showing of (1) personal involvement in the constitutional deprivation

1 or (2) a sufficient causal connection between the supervisor's wrongful conduct and the
2 constitutional violation. *See Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011).

3 Finally, Stevenson alleges that his inmate appeals are "absent of due process," Docket No.
4 1 at 3, but there is no federal constitutional right to a prison or jail administrative appeal or
5 grievance system for California inmates. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir.
6 2003). Prison and jail officials are not liable for a due process violation for simply failing to
7 process an appeal properly, denying an inmate appeal or granting an inmate appeal. A claim under
8 § 1983 for a due process violation is not stated against any defendant for the handling of
9 Stevenson's inmate appeals.

10
11 **CONCLUSION**

12 The complaint is dismissed with leave to amend. Plaintiff must file an amended complaint
13 that complies with the directions in this order no later than **May 19, 2017**, and must include the
14 caption and civil case number used in this order and the words AMENDED COMPLAINT on the
15 first page. Plaintiff is cautioned that his amended complaint must be a complete statement of his
16 claims. *See Lacey v. Maricopa County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc) ("For claims
17 dismissed with prejudice and without leave to amend, we will not require that they be repled in a
18 subsequent amended complaint to preserve them for appeal. But for any claims voluntarily
19 dismissed, we will consider those claims to be waived if not repled.") Failure to file the amended
20 complaint will result in the dismissal of this action.

21 **IT IS SO ORDERED.**

22 Dated: April 6, 2017

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25 SUSAN ILLSTON
26 United States District Judge
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