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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SANTIAGO MARTINEZ,

Plaintiff,

vs.

KEVIN R. CHAPPELL,

Defendant.

No. C 12-6164 PJH (PR)

**ORDER RECLASSIFYING
CASE AND DISMISSING
WITH LEAVE TO AMEND**

This case was opened when Martinez filed a habeas petition with the court pursuant to 28 U.S.C. § 2254. However, a review of the petition indicates that plaintiff is raising claims regarding prison conditions, therefore the clerk shall reclassify the case on the docket as a civil rights case, 42 U.S.C. § 1983. Plaintiff has been granted leave to proceed in forma pauperis in a separate order.

DISCUSSION

A. 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;

1 the statement need only "give the defendant fair notice of what the . . . claim is and the
2 grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations
3 omitted). Although in order to state a claim a complaint "does not need detailed factual
4 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
5 requires more than labels and conclusions, and a formulaic recitation of the elements of a
6 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
7 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
8 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
9 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
10 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
11 framework of a complaint, they must be supported by factual allegations. When there are
12 well-pleaded factual allegations, a court should assume their veracity and then determine
13 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 129 S.Ct.
14 1937, 1950 (2009).

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

19 **B. Legal Claims**

20 Plaintiff alleges that seizure medication has been denied to him which is causing
21 back-locks, insomnia and depression. Plaintiff provides no specific details regarding his
22 medical condition that requires this medication or even the type of medication at issue.
23 Plaintiff has also failed to identify any specific defendants who have denied him the
24 medication.

25 Medical claims like the one presented by plaintiff are actionable under section 1983
26 only if plaintiff is able to allege facts plausibly asserting that he was the victim of deliberate
27 indifference to a serious medical need, a violation of the Eighth Amendment's proscription
28 against cruel and unusual punishment. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976);

1 *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, *WMX*
2 *Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). The complaint
3 will be dismissed with leave to amend, for plaintiff to identify specific defendants and
4 describe how they were deliberately indifferent to his serious medical needs in more detail.

5 **CONCLUSION**

6 1. The clerk shall reclassify this case as a civil rights case brought pursuant to 42
7 U.S.C. § 1983.

8 2. The complaint is **DISMISSED** with leave to amend in accordance with the
9 standards set forth above. The amended complaint must be filed no later than **February**
10 **18, 2013**, and must include the caption and civil case number used in this order and the
11 words AMENDED COMPLAINT on the first page. Because an amended complaint
12 completely replaces the original complaint, plaintiff must include in it all the claims he
13 wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may
14 not incorporate material from the original complaint by reference. Failure to amend within
15 the designated time will result in the dismissal of these claims.

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

21 **IT IS SO ORDERED.**

22 Dated: January 11, 2013.



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PHYLLIS J. HAMILTON
United States District Judge

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