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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ST. MICHAEL DOC BALZARINI,
Plaintiff,
v.
DR. W. ULIT, et. al.,
Defendants.

No. C 13-1486 PJH (PR)

**ORDER DISMISSING WITH
LEAVE TO AMEND**

Plaintiff, a state prisoner has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

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; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual

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

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

16 **B. Legal Claims**

17 Plaintiff raises claims that defendants were deliberately indifferent to his serious
18 medical needs.¹ Plaintiff discusses a few events at Salinas Valley State Prison which is in
19 this district and many incidents at Corcoran State Prison which lies in the Eastern District of
20 California. If plaintiff wishes to raise claims at Corcoran State Prison, he must file a case in
21 that district and the court will only review the claims that occurred at Salinas Valley State
22 Prison.

23 Deliberate indifference to serious medical needs violates the Eighth Amendment's
24 proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104
25 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other*
26 *grounds, WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc).

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28 ¹ The court has reviewed the amended complaint. Docket No. 3.

1 A determination of "deliberate indifference" involves an examination of two elements: the
2 seriousness of the prisoner's medical need and the nature of the defendant's response to
3 that need. *Id.* at 1059.

4 A "serious" medical need exists if the failure to treat a prisoner's condition could
5 result in further significant injury or the "unnecessary and wanton infliction of pain." *Id.* The
6 existence of an injury that a reasonable doctor or patient would find important and worthy of
7 comment or treatment; the presence of a medical condition that significantly affects an
8 individual's daily activities; or the existence of chronic and substantial pain are examples of
9 indications that a prisoner has a "serious" need for medical treatment. *Id.* at 1059-60.

10 A prison official is deliberately indifferent if he or she knows that a prisoner faces a
11 substantial risk of serious harm and disregards that risk by failing to take reasonable steps
12 to abate it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The prison official must not only
13 "be aware of facts from which the inference could be drawn that a substantial risk of serious
14 harm exists," but he "must also draw the inference." *Id.* If a prison official should have
15 been aware of the risk, but was not, then the official has not violated the Eighth
16 Amendment, no matter how severe the risk. *Gibson v. County of Washoe*, 290 F.3d 1175,
17 1188 (9th Cir. 2002). "A difference of opinion between a prisoner-patient and prison
18 medical authorities regarding treatment does not give rise to a § 1983 claim." *Franklin v.*
19 *Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981).

20 Plaintiff states that doctors are not adequately treating his illness and providing
21 proper medication, despite his deteriorating condition. Plaintiff does not identify any of the
22 doctors by name or provide specifics of his medical problems or how the doctors were
23 deliberately indifferent. It appears from plaintiff's exhibits that he has liver problems and
24 Hepatitis C. Plaintiff allegations are vague and simply attaching exhibits does not state a
25 claim. Plaintiff's complaint will be dismissed with leave to amend. He must identify the
26 individual defendants from Salinas Valley State Prison, describe his medical problems and
27 how the defendants were deliberately indifferent. Stating only that doctors have not
28 adequately treated his illness and he has deteriorated is insufficient.

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CONCLUSION

1. The complaint is **DISMISSED** with leave to amend in accordance with the standards set forth above. The amended complaint must be filed no later than **June 5, 2013**, and must include the caption and civil case number used in this order and the words **AMENDED COMPLAINT** on the first page. Because an amended complaint completely replaces the original complaint, plaintiff must include in it all the claims he wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to amend within the designated time will result in the dismissal of these claims.

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

IT IS SO ORDERED.

Dated: May 3, 2013.



PHYLLIS J. HAMILTON
United States District Judge

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