

United States District Court
For the Northern District of California

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FILED

NOV 29 2012

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID LOPEZ,
Plaintiff,

vs.

M. E. SPEARMAN, et al.,
Defendants.

No. C 12-04554 EJD (PR)

ORDER OF DISMISSAL WITH
LEAVE TO AMEND

On August 30, 2012, Plaintiff filed a civil rights action under 42 U.S.C. § 1983, against Correctional Training Facility medical officials. Plaintiff's motion for leave to proceed in forma pauperis, (Docket No. 3), will be granted in a separate order.

DISCUSSION

A. 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,

1 however, be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696,
2 699 (9th Cir. 1988).

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

7 **B. Plaintiff's Claims**

8 Plaintiff identifies several Defendants and then states they were deliberately
9 indifferent to his medical needs. Plaintiff provides no other information instead he has
10 attached approximately seventy-five pages of exhibits to assert his claim, though the
11 exhibits discuss a wide range of issues. This is insufficient and Plaintiff must describe
12 his claims and not rely on exhibits. There are three typed pages that set out a
13 chronology of certain events but do not set forth specific claims. (Pet. at 67-69.) It
14 appears Plaintiff is upset that his medical problems have not been cured, his lower bunk
15 chrono was not renewed and he was not provided an MRI. However, as pleaded, he has
16 not set forth a Constitutional violation by specific defendants. Simply stating that he
17 was not provided an MRI fails to demonstrate a violation of the Eighth Amendment.

18 Deliberate indifference to serious medical needs violates the Eighth
19 Amendment's proscription against cruel and unusual punishment. See Estelle v.
20 Gamble, 429 U.S. 97, 104 (1976); McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir.
21 1992), overruled on other grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133,
22 1136 (9th Cir. 1997) (en banc); Jones v. Johnson, 781 F.2d 769, 771 (9th Cir. 1986). A
23 determination of "deliberate indifference" involves an examination of two elements: the
24 seriousness of the prisoner's medical need and the nature of the defendant's response to
25 that need. See McGuckin, 974 F.2d at 1059.

26 Liability may be imposed on an individual defendant under 42 U.S.C. § 1983 if
27 the plaintiff can show that the defendant proximately caused the deprivation of a
28 federally protected right. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988);

1 Harris v. City of Roseburg, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives
2 another of a constitutional right within the meaning of section 1983 if he does an
3 affirmative act, participates in another's affirmative act or omits to perform an act
4 which he is legally required to do, that causes the deprivation of which the plaintiff
5 complains. See Leer, 844 F.2d at 633. The inquiry into causation must be
6 individualized and focus on the duties and responsibilities of each individual defendant
7 whose acts or omissions are alleged to have caused a constitutional deprivation. See
8 Leer, 844 F.2d at 633 (citations omitted). Plaintiff must "set forth specific facts as to
9 each individual defendant's" actions which violated his rights. Leer, 844 F.2d at 634.
10 At the pleading stage, "[a] plaintiff must allege facts, not simply conclusions, that show
11 that an individual was personally involved in the deprivation of his civil rights." Barren
12 v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998). Accordingly, this claim is
13 DISMISSED with leave to amend.


CONCLUSION

14
15 For the foregoing reasons, the amended complaint is DISMISSED with leave to
16 amend. Within **twenty-eight (28) days** of the date this order is filed, Plaintiff shall file
17 an amended complaint. The amended complaint must include the caption and civil case
18 number used in this order and the words "AMENDED COMPLAINT" on the first page
19 and write in the case number for this action, Case No. C 12-04544 EJD (PR). If using
20 the court form complaint, plaintiff must answer all the questions on the form in order
21 for the action to proceed.

22 **Failure to respond in accordance with this order by filing an amended**
23 **complaint will result in the dismissal of this action without prejudice and without**
24 **further notice to Plaintiff.**

25 The Clerk shall include two copies of the court's complaint with a copy of this
26 order to plaintiff.

27 DATED: 11/20/12


EDWARD J. DAVILA
United States District Judge

28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DAVID LOPEZ,

Plaintiff,

v.

M.E. SPEARMAN, et al.,

Defendants.

Case Number CV 12-04554 EJD (PR)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 11/29/12, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) inter-office delivery receptacle located in the Clerk's office.

David Lopez
D-24657
Correctional Training Facility
P. O. Box 689
Soledad, CA 93960

DATED: 11/29/12

Richard W. Wieking, Clerk
By: Elizabeth Garcia, Deputy Clerk

