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

CELESTINE STOOT,

Plaintiff,

No. CIV S-10-0601 DAD P

vs.

HIGH DESERT STATE PRISON, et al.,

Defendants.

ORDER

_____ /

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has not paid the required filing fee of \$350.00 or filed an application to proceed in forma pauperis. See 28 U.S.C. §§ 1914(a) & 1915(a). Plaintiff will be granted thirty days to pay the filing fee in full or submit a properly completed application to proceed in forma pauperis.

Plaintiff is cautioned that the in forma pauperis application form includes a section that must be completed by a prison official, and the form must be accompanied by a certified copy of plaintiff's prison trust account statement for the six-month period immediately preceding the filing of this action.

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1 I. Screening Requirement

2 The court is required to screen complaints brought by prisoners seeking relief
3 against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C.
4 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
5 claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be
6 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28
7 U.S.C. § 1915A(b)(1) & (2).

8 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
9 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
10 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
11 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
12 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
13 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
14 Cir. 1989); Franklin, 745 F.2d at 1227.

15 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and
16 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
17 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic
18 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47
19 (1957)). However, in order to survive dismissal for failure to state a claim a complaint must
20 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain
21 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic,
22 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the
23 allegations of the complaint. See Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740
24 (1976). The court must also construe the pleading in the light most favorable to the plaintiff and
25 resolve all doubts in the plaintiff’s favor. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

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1 II. Medical Care Claim

2 In his complaint plaintiff alleges in conclusory fashion that he received
3 inadequate medical treatment while imprisoned.¹ Plaintiff does not provide any factual
4 allegations concerning his medical condition or the necessary medical treatment he allegedly did
5 not receive. For an Eighth Amendment medical care claim, plaintiff must allege and prove “acts
6 or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.”
7 Estelle v. Gamble, 429 U.S. 97, 106 (1976). An Eighth Amendment medical claim has two
8 elements: “the seriousness of the prisoner’s medical need and the nature of the defendant’s
9 response to that need.” McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1991), overruled on
10 other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc).

11 A medical need is serious “if the failure to treat the prisoner’s condition could
12 result in further significant injury or the ‘unnecessary and wanton infliction of pain.’”
13 McGuckin, 974 F.2d at 1059 (quoting Estelle v. Gamble, 429 U.S. at 104). Indications of a
14 serious medical need include “the presence of a medical condition that significantly affects an
15 individual’s daily activities.” Id. at 1059-60. By establishing the existence of a serious medical
16 need, a prisoner satisfies the objective requirement for proving an Eighth Amendment violation.
17 Farmer v. Brennan, 511 U.S. 825, 834 (1994).

18 If a prisoner establishes the existence of a serious medical need, he must then
19 show that prison officials responded to the serious medical need with deliberate indifference.
20 Farmer, 511 U.S. at 834. In general, deliberate indifference may be shown when prison officials
21 deny, delay, or intentionally interfere with medical treatment, or may be shown by the way in
22 which prison officials provide medical care. Hutchinson v. United States, 838 F.2d 390, 393-94
23 (9th Cir. 1988). Before it can be said that a prisoner’s civil rights have been abridged with regard

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25 ¹ Plaintiff states that this action is identical to that he initiated in Case No. CIV S-09-
26 1997 EFB P (E.D. Cal.), which was dismissed for failure to exhaust administrative remedies
prior to filing suit. Plaintiff is advised that the court cannot refer to a complaint filed in a closed
case in order to discern the nature of this action.

1 to medical care, however, “the indifference to his medical needs must be substantial. Mere
2 ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this cause of action.”
3 Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at
4 105-06). Deliberate indifference is “a state of mind more blameworthy than negligence” and
5 “requires ‘more than ordinary lack of due care for the prisoner’s interests or safety.’” Farmer,
6 511 U.S. at 835 (quoting Whitley v. Albers, 475 U.S. 312, 319 (1986)).

7 Delays in providing medical care may manifest deliberate indifference. Estelle,
8 429 U.S. at 104-05. To establish a claim of deliberate indifference arising from delay in
9 providing care, a plaintiff must show that the delay was harmful. See Berry v. Bunnell, 39 F.3d
10 1056, 1057 (9th Cir. 1994); McGuckin, 974 F.2d at 1059; Wood v. Housewright, 900 F.2d 1332,
11 1335 (9th Cir. 1990); Hunt v. Dental Dep’t, 865 F.2d 198, 200 (9th Cir. 1989); Shapley v.
12 Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985). “A prisoner need not
13 show his harm was substantial; however, such would provide additional support for the inmate’s
14 claim that the defendant was deliberately indifferent to his needs.” Jett v. Penner, 439 F.3d 1091,
15 1096 (9th Cir. 2006). See also McGuckin, 974 F.2d at 1060.

16 Finally, mere differences of opinion between a prisoner and prison medical staff
17 as to proper medical care do not give rise to a § 1983 claim. Toguchi v. Chung, 391 F.3d 1051,
18 1058 (9th Cir. 2004) (quoting Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996)); Sanchez
19 v. Vild, 891 F.2d 240, 242 (9th Cir. 1989); Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir.
20 1981).

21 Because the allegations of plaintiff’s complaint are vague and fails to provide
22 sufficient allegations to state a cognizable Eighth Amendment claim, the complaint will be
23 dismissed and plaintiff will be granted leave to file an amended complaint. Should plaintiff be
24 attempting to proceed on other claims in addition to a claim that he was denied adequate medical
25 care in prison, he must clearly identify those claims, provide the constitutional or statutory basis
26 for the claim, and provide sufficient factual allegations in support thereof.

1 III. Defendants

2 Plaintiff has named the Director of the California Department of Corrections and
3 Rehabilitation, the chief medical officer, and the warden of High Desert State Prison as
4 defendants. However, plaintiff's complaint contains no allegations concerning the involvement
5 of these individuals to any claimed violation of plaintiff's constitutional rights. Any amended
6 complaint plaintiff elects to file must allege in specific terms how each named defendant was
7 involved in the deprivation of plaintiff's rights. There can be no liability under 42 U.S.C. § 1983
8 unless there is some affirmative link or connection between a defendant's actions and the
9 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167
10 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory
11 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
12 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

13 Moreover, supervisory personnel are generally not liable under § 1983 for the
14 actions of their employees under a theory of respondeat superior and, therefore, when a named
15 defendant holds a supervisory position, the causal link between him and the claimed
16 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
17 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory
18 allegations concerning the involvement of official personnel in civil rights violations are not
19 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

20 IV. Amended Complaint

21 Local Rule 220 requires that plaintiff's amended complaint be complete in itself
22 without reference to any prior pleading. This is because, as a general rule, an amended complaint
23 supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967).
24 Therefore, in an amended complaint, as in an original complaint, each claim and the involvement
25 of each defendant must be sufficiently alleged.

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1 _____ CONCLUSION

2 In accordance with the above, IT IS HEREBY ORDERED that:

3 1. Plaintiff shall submit, within thirty days from the service of this order, either
4 the \$350.00 filing fee or a properly completed application to proceed in forma pauperis on the
5 form provided with this order;

6 2. Plaintiff's complaint, filed on March 15, 2010, is dismissed.

7 3. Plaintiff is granted thirty days from the date of service of this order to file an
8 amended complaint that complies with the requirements of the Civil Rights Act, the Federal
9 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the
10 docket number assigned to this case and must be labeled "Amended Complaint"; plaintiff must
11 use the form complaint provided by the Clerk of the Court;

12 4. Plaintiff is cautioned that failure to comply with this order will result in a
13 recommendation that this action be dismissed without prejudice; and

14 5. The Clerk of the Court is directed to send plaintiff an Application to Proceed
15 In Forma Pauperis By a Prisoner and the form complaint for use in a civil rights action.

16 DATED: September 22, 2010.

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19 _____
20 DALE A. DROZD
21 UNITED STATES MAGISTRATE JUDGE

21 DAD:4
22 stoo0601.14