



(PC) Taylor v. Patel et al

2015 | Cited 0 times | E.D. California | January 29, 2015

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

DELTON L. TAYLOR,

Plaintiff, v. HARISHKUMAR PATEL, et al.,

Defendants.

CASE NO. 1:14-cv-01754(PC) ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND
THIRTY (30) DAY DEADLINE

Plaintiff, Delton Taylor, is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff has consented to Magistrate Judge jurisdiction. No other parties have appeared in this

I. SCREENING REQUIREMENT The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has

relief may be granted, or that seek monetary relief from a defendant who is immune from thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may

essentially as follows: Plaintiff, now incarcerated at Centinela State Prison, has had steadily worsening lower back problems since at least 2010. Medical records included with his complaint show disc protrusion at the L-4 and L-5 vertebrae

in January 2010. In November 2013, Dr. Goller at Wasco State Prison -5 and L5- -4. In April 2014, Dr. Waters at Centinela St degenerative and facet degenerative changes at L4- -3 and L3-4 disc degenerative disease

Plaintiff had MRIs taken in May and August of 2014 at outside medical facilities, with a Dr. Wilson concluding in May that Plaintiff had a herniated disc and stenosis, and a Dr. Yoo concluding in August that Plaintiff had severe degenerative joint disease and possible discitis or osteomyelitis. Yoo recommended that Plaintiff be biopsied to determine the cause of his inflammation. He also



(PC) Taylor v. Patel et al

2015 | Cited 0 times | E.D. California | January 29, 2015

discussed with Plaintiff the possibility of back surgery, specifically lumbar fusion. He noted that Plaintiff had already

Throughout these medical appointments, Plaintiff has consistently complained of severe back pain. His records indicate that he has been prescribed several opioid painkillers, including morphine and tramadol.

do not arise out of any of the procedures detailed above, but instead out of his treatment at Wasco by Drs. Patel and Le. He alleges that he made t

medical records, told Plaintiff his X-Ray showed nothing was wrong with his back, and took him off of pain med care (or lack thereof)

On February 7, 2014, Plaintiff was seen by Dr. Le. Dr. Le also refused to look at

Le was also apparently

Plaintiff does not specify whether he saw Dr. Le before or after seeing Dr. Patel, or whether he saw either of them in conjunction with visits with other doctors at Wasco. Plaintiff has not included the records of his requests to see either doctor, nor has he included the records of his appointments with them.

Plaintiff requests the appointment of counsel and \$2.5 million in damages. III. ANALYSIS Plaintiff attempts to allege Eighth Amendment medical indifference claims against Defendants Patel and Le. He claims both doctors acted with deliberate indifference when they ignored his medical history and refused his requests for an MRI and to be referred to a spine specialist. He additionally claims Defendant Patel showed deliberate indifference by misreading Plainti X-ray and taking him off pain medication for a month and a half.

A. Pleading Standard Section 1983 provides a cause of action for the deprivation of any rights, privileges, or immunities secured by the Constitution *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights conferred elsewhere. *Graham v. Connor*, 490 U.S. 386, 393-94 (1989).

To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated and (2) that the alleged violation was committed by a person acting under the color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988); *Ketchum v. Alameda Cnty.*, 811 F.2d 1243, 1245 (9th Cir. 1987).

ed. R. Civ. P. 8(a)(2). Detailed factual allegations



(PC) Taylor v. Patel et al

2015 | Cited 0 times | E.D. California | January 29, 2015

Ashcroft v. Iqbal, 556 U.S.

662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). to relief Id. Facial plausibility demands more than the mere possibility that a defendant committed misconduct and, while factual allegations are accepted as true, legal conclusions are not. Id. at 677-78.

B. Medical Indifference The Eighth Amendment of the United States Constitution entitles prisoners to medical care, and a prison official violates the Amendment when he acts with deliberate Estelle v. Gamble, 429 U.S. 97, 104(1976); Peralta v. Dillard, 744 F.3d 1076, 1081 (9th Cir. 2014); Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006). Peralta, 744 F.3d at 1081 (citing Jett, 439

F.3d at 1096). Exa that a reasonable doctor or patient would find important and worthy of comment or daily activities Colwell v. Bannister, 763 F.3d 1060, 1066 (9th Cir. 2014).

A prison official shows deliberate indifference to such a need Peralta, 744 F.3d at 1082 (citing Farmer v. Brennan, 511 U.S. 825, 837 (1994). Colwell, 763 F.3d at 1066 (citing Farmer, 511 U.S. at 835). Instead, the prison

official e could be drawn that a Colwell, 763 F.3d at 1066. Prison officials may demonstrate deliberate indifference when they deliberately indifferent in their provision of care. Id.

onstitutes medical indifference where the knows that a course of treatment was ineffective but continued it anyway, or delays necessary treatment without justification. See Jett v. Penner, 439 F.3d 1091, 1097-1098 (9th Cir. 2006); Wakefield, 177 F.3d at 1165; Estate of Prasad ex rel. Prasad v. Cty. of Sutter, 958 F.Supp.2d 1101, 1112-1113 (E.D. Cal. 2013). -specialized conclusi Colwell v. Bannister, 763 F.3d 1060, 1068 (9th Cir. 2014); Snow v. McDaniel, 681 F.3d 978, 988 (9th Cir. 2012)(overruled in part on other grounds); Hamilton v. Endell, 981 F.2d 1062, 1067(9th Cir. 1992)(overruled in part on other grounds).

Negligence, inadvertence, or differences of medical opinion between the prisoner and health care providers, however, do not amount to a constitutional violation. See Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989); Lyons v. Busi, 566 F.Supp.2d 1172, 1191-1192 (E.D. Cal. 2008); see also Colwell v. Bannister, 763 F.3d 1060, 1068 (9th Cir. 2014)(distinguishing - finding defendants deliberately indifferent) show that the course of treatment the doctors chose was medically unacceptable under

Snow, 681 F.3d at 988 (9th Cir. 2012)(quoting Jackson, 90 F.3d at 332).



(PC) Taylor v. Patel et al

2015 | Cited 0 times | E.D. California | January 29, 2015

1. Serious Medical Need

Here, Plaintiff has met the first prong of the deliberate indifference test: he has alleged sufficient facts to establish that he had a serious medical need. His records indicate that he suffers from longstanding, degenerative lower back conditions which cause chronic pain and necessitate treatment with strong opioid pain medications. This reflects a serious medical condition.

2. Deliberate Indifference

However, Plaintiff has failed to allege sufficient facts for the court to determine whether he has stated a cognizable claim for deliberate medical indifference. The pleading is lacking in several respects.

First, because the Court cannot discern a coherent timeline of relevant events, it cannot tell what physicians knew when, or where, in the course of their respective treatment they may have exhibited indifference. Plaintiff does not provide the dates of any appointments with Patel. He mentions that he saw Le on February 7, 2014, but he does not say whether this appointment was isolated or part of a longer course of treatment.

Next, Plaintiff claims Defendants ignored his medical history, and refused to order MRIs or refer him to a spine specialist. However, records included with the complaint show that Plaintiff was in fact referred for two MRIs in 2014 and seen by several outside spine doctors. It is not clear if Plaintiff is alleging that these referrals should have been made earlier and, if so, when and why, or that he suffered adverse consequences as a result of any alleged delay.

Third -month stay in the hospital, but Plaintiff does not provide any factual support for this allegation, does not say when the stay took place, what brought him there, or what treatment or medical procedures he received there.

Finally, Plaintiff claims that Patel told him his X-Ray showed nothing wrong and took him off pain medication for a month and a half. Plaintiff does not set forth his basis for claiming this constituted deliberate indifference, rather than a difference in medical opinion, or what reasons Patel gave for his decisions. Nor does plaintiff provide a sequence of events to enable the Court to tell when the X-ray was taken (e.g. before or after surgery) or when Patel . P most recent records indicate that he was receiving pain medication as of August 2014.

Without more the Court cannot will give Plaintiff leave to amend his complaint to include this information.

C. Request for Counsel Plaintiff seeks the appointment of counsel in this action. However, there is no general constitutional right to effective assistance of counsel in civil cases. *Rand v. Rowland*, 113



(PC) Taylor v. Patel et al

2015 | Cited 0 times | E.D. California | January 29, 2015

F.3d 1520, 1525 (9th Cir. 1997) partially overruled on other grounds, 154 F.3d 952, 954 n.1 (9th Cir. 1998); *White v. McGinnis*, 903 F.2d 699, 700 n.3 (9th Cir. 1990). Nor is there a constitutional right to appointed counsel for § 1983 claims, specifically. *Campbell v. Burt*, 141 F.3d 927, 931 (9th Cir. 1998). The Court may, in *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009); *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004). However, without a reasonable method of securing and compensating counsel, the Court will seek volunteer counsel only in the most serious and exceptional cases. To determine whether exceptional circumstances exist, the Court must evaluate both the likelihood of success on the merits to articulate his claims in light of the complexity of the legal issues involved. *Palmer*, 560

F.3d at 970. Neither of these factors is dispositive and both must be viewed together before reaching a decision on request of counsel under section 1915(d). *Id.*, at 970(citing *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

The burden of demonstrating exceptional circumstances is on the Plaintiff. *Palmer*, 560 F.3d at 970 circumstances for the appointment of counsel accord, *Alvarez v. Jacquez*, 415 F. App'x 830, 831 (9th Cir. 2011) *Simmons v. Hambly*, 14 F. App'x 918, 919 (9th Cir. 2001) (same); *Davis v. Yarborough*, 459 F. App'x 601, 602 (9th Cir. 2011) circumstances' required to appoint counsel under 28 U.S.C. § 1915(e)(1)

Here, Plaintiff has not demonstrated the existence of exceptional circumstances. At the screening stage, the Court cannot make a determination that Plaintiff is likely to succeed on the merits. The claims alleged do not appear to be novel or unduly complex. The facts alleged to date appear straightforward and unlikely to involve extensive investigation and discovery. Moreover, the papers filed by Plaintiff in this case reflect an appreciation of the legal issues and standards and an ability to express them adequately in writing. The Court does not find that Plaintiff cannot adequately articulate his claims. Finally, it is not clear Plaintiff has exhausted diligent efforts to secure counsel. See e.g., *Thornton v. Schwarzenegger*, 2011 WL 90320, *3 4 (S.D.Cal. 2011) (cases cited).

HEREBY DENIED, without prejudice. IV. CONCLUSION fails to plead sufficient facts to state Eighth Amendment claims for deliberate indifference to his medical needs against either Patel or Le.

Plaintiff also fails to allege the exceptional circumstances justifying the appointment of counsel, so the court denies his request.

The Court grants Plaintiff the opportunity to correct the deficiencies analyzed above in an amended complaint. See *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000); *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987). If Plaintiff amends, he may not change the nature of this suit by adding new, unrelated claims in his amended complaint. *George v. Smith*

An amended complaint would supersede the prior complaint. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 f.2d 565, 567 (9th Cir. he prior or superseded pleading. 0. V.



(PC) Taylor v. Patel et al

2015 | Cited 0 times | E.D. California | January 29, 2015

ORDER It is HEREBY ORDERED that:

1. copy of his Complaint, filed November 10, 2014;
2. 3. Plaintiff shall file an amended complaint within thirty (30) days; and 4. If Plaintiff fails to file an amended complaint in compliance with this order, the

Court will dismiss this action, with prejudice, for failure to state a claim, failure to comply with a court order, and failure to prosecute, subject provision set forth in 28 U.S.C. § 1915(g). *Silva v. Di Vittorio*, 658 F.3d 1090, 1098

(9th Cir. 2011).

IT IS SO ORDERED.

Dated: January 29, 2015 /s/ Michael J. Seng UNITED STATES MAGISTRATE JUDGE

