

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
8

9
10 RONALD YOUNG,

11 Plaintiff,

12 v.

13 C. SISODIA AND J. KIM,

14 Defendants.
15
16
17
18

1:15-cv-00640-LJO-EPG (PC)

SCREENING ORDER

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION
PROCEED AGAINST DEFENDANT C.
SISODIA FOR DELIBERATE
INDIFFERENCE TO A SERIOUS
MEDICAL NEED IN VIOLATION OF THE
EIGHTH AMENDMENT, AND THAT ALL
OTHER CLAIMS AND DEFENDANTS BE
DISMISSED WITH PREJUDICE
(ECF NO. 19)

TWENTY DAY DEADLINE

19 **I. BACKGROUND**

20 Ronald Young (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis*
21 in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
22 commencing this action on April 27, 2015. (ECF No. 1). The Court screened Plaintiff’s
23 complaint on June 24, 2016, finding that it failed to state any claims against any of the
24 Defendants upon which relief may be granted under section 1983, and giving Plaintiff leave to
25 amend. (ECF No. 13). Plaintiff filed a first amended complaint on July 21, 2016, and the
26 Court initially issued Findings and Recommendations for dismissal for failure to state a claim
27 without leave to amend. (ECF No. 15). Plaintiff lodged a second amended complaint on
28 October 14, 2016. (ECF No. 17). On October 24, 2016, this Court vacated its Findings and

1 Recommendations and granted leave to Plaintiff to file the second amended complaint, (ECF
2 No. 18), which is before this Court for screening.

3 **II. LEGAL STANDARDS FOR SCREENING**

4 The Court is required to screen complaints brought by prisoners seeking relief against a
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
6 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
7 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
8 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. §
9 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
10 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
11 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. §
12 1915(e)(2)(B)(ii).

13 A complaint is required to contain “a short and plain statement of the claim showing
14 that the pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
15 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
16 mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct.
17 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955
18 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
19 unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
20 (internal quotation marks and citation omitted). Plaintiff must set forth “sufficient factual
21 matter, accepted as true, to state a claim to relief that is plausible on its face.” Iqbal 556 U.S. at
22 678 (internal quotation marks and citation omitted). While factual allegations are accepted as
23 true, legal conclusions are not. Id. The mere possibility of misconduct falls short of meeting
24 this plausibility standard. Id. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th
25 Cir. 2009).

26 **III. ALLEGATIONS IN PLAINTIFF’S FIRST AMENDED COMPLAINT**

27 Plaintiff claims that he suffers from a rash and was denied daily showers needed to care
28 for that rash due. Plaintiff claims that he developed a skin rash following rotator cuff surgery.

1 Plaintiff was prescribed a medication from the surgery that caused skin irritations, legions of
2 sores, outbreaks and rashes on his body. An off-site specialist, Dr. P. Haines Ely, prescribed
3 daily showers in addition to medication for the rash.

4 Plaintiff's second amended complaint focuses on the fact that Plaintiff was issued a
5 comprehensive accommodation chrono on July 30, 2014, which appears to require that he be
6 given daily showers. He attached the chrono to the second amended complaint, and it appears
7 to show that he was authorized to receive a daily shower. It is signed by C. Sisodia.

8 Plaintiff alleged that on July 30, 2014, the same day the chrono was issued, Defendant
9 Sisodia stated "even though dermatology recommended daily showers to keep the rectal area
10 clean you were denied this. Medical staff is under no obligation to provide treatment as
11 recommended by an outside specialist." Plaintiff alleged that Defendant Sisodia failed to
12 provide notice of the chrono at that time and during the various requests and appeals that
13 followed. Defendant Sisodia became very angry and hostile using derogatory language for
14 wasting their time with the appeal, which was going to be denied regardless.

15 Despite this chrono, Plaintiff failed to receive daily showers. Plaintiff alleges that
16 Defendants' continued denial of shower and adequate medical care after the issuance of the
17 above chrono is a prima facie showing of deliberate indifference, among other things.

18 Plaintiff also alleges that Defendant Dr. J. Kim failed to provide adequate medical care
19 after being given notice of the specialist treatment plan, which required daily showers and
20 medication.

21 Plaintiff's complaint also includes numerous conclusory legal allegations regarding a
22 custom and practice of maintaining a code of silence and violating constitutional guarantees.

23 **IV. DELIBERATE INDIFFERENCE TO SERIOUS MEDICAL NEEDS**

24 The Eighth Amendment of the United States Constitution entitles Plaintiff to medical
25 care and is violated when a prison official acts with deliberate indifference to an inmate's
26 serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012), overruled in part
27 on other grounds by Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir. 2014); Wilhelm v.
28 Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir.

1 2006). Plaintiff must show (1) “a serious medical need by demonstrating that failure to treat
2 [his] condition could result in further significant injury or the unnecessary and wanton
3 infliction of pain,” and (2) that “the defendant's response to the need was deliberately
4 indifferent.” Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d 1091, 1096 (9th Cir. 2006)).
5 Deliberate indifference is shown by “(a) a purposeful act or failure to respond to a prisoner's
6 pain or possible medical need, and (b) harm caused by the indifference.” Wilhelm, 680 F.3d at
7 1122 (citing Jett, 439 F.3d at 1096). The requisite state of mind is one of subjective
8 recklessness, which entails more than ordinary lack of due care. Snow, 681 F.3d at 985
9 (citation and quotation marks omitted); Wilhelm, 680 F.3d at 1122.

10 This is Plaintiff's third complaint. The Court has twice held that Plaintiff's allegations
11 do not rise to the level of deliberate indifference to serious medical needs based on the
12 allegations in those complaints. Plaintiff's second amended complaint omits many of the
13 details in the earlier complaints and relies heavily on legal conclusions.

14 But the Court is troubled by the fact that Plaintiff points to a signed chrono authorizing
15 daily showers from within the institution. Plaintiff also alleges that the same person who
16 signed that chrono (Defendant Sisodia) appears to have denied Plaintiff daily showers without
17 reason. While the allegations are sparse, liberally construed in Plaintiff's favor, the Court finds
18 that these allegations state a claim for denial of medical care, in violation of the Eighth
19 Amendment. It is possible that additional facts may ultimately show that Defendant Sisodia
20 did not act with the required deliberate indifference. However, based on the facts now before
21 the Court, the Court will recommend that this one claim to go forward as to Defendant Sisodia.

22 The Court does not find such a claim against Defendant Kim. The second amended
23 complaint contains almost no facts regarding Defendant Kim. The fact that Defendant Kim did
24 not direct daily showers is not enough to find deliberate indifference to serious medical needs
25 under the law.

26 The Court also does not find any other constitutional violations for the reasons
27 described in prior orders. Indeed, this second amended complaint contains even fewer facts
28 that could possibly support such claims, such as a claim for retaliation.

