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

MALIK JONES,

No. CIV S-06-2732-FCD-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

C. STIEFERMAN, et al.,

Defendants.

_____ /

Plaintiff, a state prisoner proceeding with counsel, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff's second amended complaint (Doc. 84).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the

1 complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it
2 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege
3 with at least some degree of particularity overt acts by specific defendants which support the
4 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
5 impossible for the court to conduct the screening required by law when the allegations are vague
6 and conclusory.

7 In an order issued concurrently herewith, the undersigned found Plaintiff's second
8 amended complaint, read liberally, appears to state a cognizable claim against several defendants.
9 However, as discussed below, plaintiff fails to state a cognizable claim against defendants
10 Stieferman, Rudolph, Holmes, Ward, Chastain, and Plier. In addition defendants Cambine,
11 Churray, Kimbrell and Rianda were previously dismissed from this action, and Plaintiff should
12 not be allowed to reinstate this action against them. Finally, Plaintiff is attempting to bring two
13 new defendants, Harper and Burgett, into this action on new and unrelated claims.

14 I. PLAINTIFF'S ALLEGATIONS

15 Plaintiff's second amended complaint generally alleges that the defendants have
16 acted with deliberate indifference to his mental health needs, retaliated against him, assaulted
17 him, and harassed him. In addition, Plaintiff claims he has been deprived of his wheelchair, and
18 the warden refused to intervene in his mistreatment. He also has named several individuals as
19 defendants, but fails to make any allegations against them.

20 II. DISCUSSION

21 A. FAILURE TO LINK

22 To state a claim under 42 U.S.C. § 1983, the plaintiff must allege an actual
23 connection or link between the actions of the named defendants and the alleged deprivations.
24 See Monell v. Dep't of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
25 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the
26 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts, or

1 omits to perform an act which he is legally required to do that causes the deprivation of which
2 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and
3 conclusory allegations concerning the involvement of official personnel in civil rights violations
4 are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Rather, the
5 plaintiff must set forth specific facts as to each individual defendant’s causal role in the alleged
6 constitutional deprivation. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

7 Here, Plaintiff names the following additional individuals as defendants:
8 Stieferman, Rudolph, Homes, Ward, and Chastain. The undersigned found Plaintiff’s first
9 amended complaint was sufficient to state a claim against several of these individuals, but
10 Plaintiff’s second amended complaint, which supercedes the first, fails to allege any facts
11 regarding the individuals’ role in his alleged constitutional deprivations. There are no allegations
12 in his second amended complaints against these individuals. The only place they are mentioned
13 is in the list of defendants, wherein Plaintiff identifies the defendants’ and their respective
14 positions.

15 Often, especially when a prisoner is proceeding pro se, a plaintiff will be provided
16 an opportunity to cure such a defect. However, Plaintiff is no longer proceeding pro se, and he
17 has been provided ample opportunity to file a sufficient complaint. Therefore, the undersigned
18 recommends the dismissal of these individuals as defendants to this action, without further leave
19 to amend, and this action proceed on the second amended complaint as set forth in the
20 undersigned’s screening order.

21 B. SUPERVISOR LIABILITY

22 Supervisory personnel are generally not liable under § 1983 for the actions of their
23 employees. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that there is no
24 respondeat superior liability under § 1983). A supervisor is only liable for the constitutional
25 violations of subordinates if the supervisor participated in or directed the violations. See id. The
26 Supreme Court has rejected the notion that a supervisory defendant can be liable based on

1 knowledge and acquiescence in a subordinate’s unconstitutional conduct because government
2 officials, regardless of their title, can only be held liable under § 1983 for his or her own conduct
3 and not the conduct of others. See Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). When a
4 defendant holds a supervisory position, the causal link between such defendant and the claimed
5 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
6 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory
7 allegations concerning the involvement of supervisory personnel in civil rights violations are not
8 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). “[A] plaintiff must
9 plead that each Government-official defendant, through the official’s own individual actions, has
10 violated the constitution.” Iqbal, 129 S. Ct. at 1948.

11 Plaintiff names Warden Piler as a defendant in this action based solely on the
12 allegation that she refused to intervene in his mistreatment. As stated above, a supervisory
13 defendant can only be liable for his or her own conduct, not that of others. Except for his
14 allegation that he attempted to communicate with Warden Piler about his mistreatment, and
15 therefore she was presumably aware of it and failed to intervene, there are no allegations of any
16 affirmative conduct by Warden Piler. Plaintiff makes no allegation that Warden Piler actively
17 participated in his alleged mistreatment. Knowledge and acquiescence of mistreatment is
18 insufficient to impose liability on a supervisory defendant. As discussed above, Plaintiff has
19 been provided sufficient opportunity to cure defects in his complaints, and therefore the
20 undersigned recommends that defendant Piler be dismissed from this action, without leave to
21 amend, for failure to state a claim.

22 C. SUPPLEMENTAL CLAIMS

23 Finally, Plaintiff’s second amended complaint attempts to add new and unrelated
24 claims against new defendants. Specifically, Plaintiff alleges defendants Harper and Burgett, in
25 October 2009, took his wheelchair away from him in disregard of his medical needs.

26 This action was originally filed in 2006. These new allegations are from actions

1 occurring in 2009, almost three years after the case was originally filed. An amended complaint
2 is a complaint in which the plaintiff sets forth allegations concerning events which took place
3 before the original pleading was filed. In contrast, where a plaintiff sets forth allegations
4 concerning events which took place after the original pleading was filed, the plaintiff is
5 attempting to supplement his complaint. See Cabrera v. City of Huntington Park, 159 F.3d 374,
6 382 (9th Cir. 1998). Supplemental complaints are governed by Rule 15(d). Rule 15(d) provides:
7 “On motion and reasonable notice, the court may, on just terms, permit a party to serve a
8 supplemental pleading setting out any transaction, occurrence, or event that happened after the
9 date of the pleading to be supplemented.” Fed. R. Civil Proc. 15(d). “Rule 15(d) is intended to
10 give district courts broad discretion in allowing supplemental pleadings.” Keith v. Volpe, 858
11 F.2d 467, 473 (9th Cir. 1988).

12 Although new claims in a supplemental complaint do not necessarily need to arise
13 out of the same occurrence or transaction, there must be *some* relationship “between the newly
14 alleged matters and the subject of the original action.” Keith, 858 F.2d at 474. Indeed, a
15 supplemental pleading “cannot be used to introduce a ‘separate, distinct and new cause of
16 action.’” Planned Parenthood of So. Arizona v. Neely, 130 F.3d 400, 402 (9th Cir. 1997)
17 (quoting Berssenbrugge v. Luce Mfg. Co., 30 F. Supp. 101, 102 (D. Mo. 1939)). “The purpose
18 of Rule 15(d) is to promote as complete an adjudication of the dispute between the parties as
19 possible by allowing the addition of claims which arise after the initial pleadings are filed.”
20 William Inglis & Sons Baking co. v. ITT Cont’l, 668 F.2d 1014, 1057(9th Cir. 1981) (citing
21 Case-Swayne Co. v. Sunkist Growers, Inc., 369 F.2d 449, 462 (9th Cir. 1966)).

22 Here, Plaintiff’s claims against Harper and Burgett have no relation to his original
23 claims. His original claims relate to his mental health, retaliation, and excessive force. His
24 claims against Harper and Burgett have to do with their disregard of his physical medical needs,
25 specifically taking his wheelchair away. There is no reason for these new claims to be included
26 in this case and including the new claims in this matter would not promote judicial economy. If

1 plaintiff wishes to litigate any claims he may have against these individuals, he may file a
2 separate action. However, he should not be allowed to include them in this action. Therefore,
3 the undersigned recommends defendants Harper and Burgett be dismissed from this action, but
4 the claims against them be dismissed without prejudice.

5 **III. CONCLUSION**

6 Based on the foregoing, the undersigned recommends that:

- 7 1. Plaintiff not be permitted to reinstate his claims against defendants
8 Cambine, Churray, Kimbrell and Rianda who have previously been dismissed from this case;
9 2. Defendants Stieferman, Rudolph, Homes, Ward, Chastain, and Pliler, be
10 dismissed from this action, without leave to amend, for failure to state a claim;
11 3. Harper and Burgett be dismissed from this action, but the claims against
12 them be dismissed without prejudice; and
13 4. This action proceed as against the remaining defendants as set forth in the
14 undersigned's screening order.

15 These findings and recommendations are submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court. Responses to objections shall be filed within 14 days after service of
19 objections. Failure to file objections within the specified time may waive the right to appeal.
20 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21
22 DATED: June 22, 2010

23 
24 **CRAIG M. KELLISON**
25 UNITED STATES MAGISTRATE JUDGE
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