

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

STEVEN COPPLER,

Plaintiff,

v.

SUE WASHBURN *et al.*,

Defendants.

Case No. 2:22-cv-01913-IM

OPINION AND ORDER

IMMERGUT, District Judge.

Plaintiff Steven Coppler (“Plaintiff”), an individual in custody at the Eastern Oregon Correctional Institution (“EOCI”), brings this civil rights action pursuant to [42 U.S.C. §1983](#) (“Section 1983”) alleging that defendants denied him adequate medical care in violation of the Eighth Amendment. Presently before the Court is Defendants’ Motion to Dismiss. (ECF No. 12.) For the reasons set forth below, the Court denies the motion and orders Defendants to answer Plaintiff’s complaint.

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BACKGROUND

Plaintiff filed this civil rights action on December 2, 2022,¹ naming as defendants Sue Washburn (“Washburn”), the former Superintendent of EOCI; Collette Peters (“Peters”), the former Director of the Oregon Department of Corrections (“ODOC”); and Nurse Blood, who presently provides medical care at EOCI (collectively, “Defendants”). (Compl. (ECF No. 1) at 2-3.) Plaintiff also names several Doe defendants who are not relevant to the instant motion.

Plaintiff alleges that Defendants denied him adequate medical care for several broken bones and lacerations to his right hand that he suffered in a weightlifting accident on December 3, 2020. (*Id.* at 6-9.) Plaintiff acknowledges that immediately after the accident, he received outside medical care by an orthopedic surgeon, including stitches and a cast on his right hand, and then spent several days in the EOCI infirmary. (*Id.* at 6.) He alleges, however, that after this brief recovery period, Nurse Blood returned him to general population without care instructions, information regarding future appointments or rehabilitation, or medication for pain relief other than ibuprofen. (*Id.* at 7.) Plaintiff claims that even though Nurse Blood is not qualified to make medical decisions or otherwise override the treatment plan prescribed by his treating physician, she discontinued his pain medication, denied further care or physical therapy for his hand, and ignored his complaints. (*Id.* at 7-8.) As a result, Plaintiff’s hand became infected and had to be drained, and he continues to suffer severe pain and nerve damage in his right hand. (*Id.* at 8.)

Plaintiff alleges that for years preceding and after his injury, EOCI did not have a qualified physician on staff. (*Id.* at 8-9.) Plaintiff alleges that despite knowing that EOCI did not have a

¹ December 2, 2022 is the date Plaintiff signed the complaint and presumably delivered it to prison officials for mailing. See *Houston v. Lack*, 487 U.S. 266 (1988); see also *Douglas v. Noelle*, 567 F.3d 1103, 1107 (9th Cir. 2009).

physician, or any other medical personnel, qualified to treat a severe injury like that suffered by Plaintiff, Washburn and Peters failed to hire appropriately qualified medical personnel to provide treatment to individuals in custody at EOCl. (*Id.* at 9.) Plaintiff alleges that Washburn and Peters' failure to maintain a sufficiently qualified medical staff constitutes deliberate indifference to his serious medical needs. (*Id.*)

The Court subsequently screened the complaint pursuant to [28 U.S.C. § 1915A](#) and, upon finding that Plaintiff adequately stated a claim against Nurse Blood, Washburn, and Peters, issued a notice of lawsuit and request for waiver of service. (ECF No. 8.) The notice expressly noted that the Court had reviewed the complaint and concluded that "Plaintiff has a reasonable opportunity to prevail on one or more claims and Defendants must therefore file an answer or other responsive pleading." (*Id.*) Defendants thereafter waived service and filed a "waiver of reply; demand for a jury trial." (ECF No. 11.) This motion to dismiss soon followed.

STANDARDS

The Court must dismiss an action initiated by an individual in custody seeking redress from a governmental entity or officer or employee if the Court determines that the action (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief. [28 U.S.C. §§ 1915\(e\)\(2\)\(B\)](#); [28 U.S.C. § 1915A\(b\)](#). To state a claim, a plaintiff must allege facts which, when accepted as true, give rise to a plausible inference that the defendants violated the plaintiff's constitutional rights. [Ashcroft v. Iqbal](#), 556 U.S. 662, 678 (2009); [Bell Atl. Corp. v. Twombly](#), 550 U.S. 544, 556-57 (2007); *see also* [Starr v. Baca](#), 652 F.3d 1202, 1216 (9th Cir. 2011) (explaining that a complaint must contain sufficient factual allegations to "plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing part to be subjected to the expense of discovery and continued litigation").

“The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Mashiri v. Epsten Grinnell & Howell*, 845 F.3d 984, 988 (9th Cir. 2017) (simplified).

Plaintiff is proceeding as a self-represented litigant, and therefore the Court construes his pleadings liberally and affords him the benefit of any doubt. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (noting that documents filed by a self-represented litigant must be liberally construed, and a self-represented litigant’s complaint ““must be held to less stringent standards than formal pleadings drafted by lawyers””). “Unless it is absolutely clear that no amendment can cure” defects in the complaint, a self-represented litigant “is entitled to notice of the complaint’s deficiencies and an opportunity to amend prior to dismissal of the action.” *Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (per curiam).

DISCUSSION

Defendants move to dismiss Plaintiff’s claims against Washburn and Peters, arguing that Plaintiff’s allegations are insufficient to establish supervisory liability under Section 1983. (Mot. at 3-5.) Defendants also move to dismiss Plaintiff’s claims against Nurse Blood in her official capacity, arguing that because Nurse Blood is not qualified to grant the injunctive relief Plaintiff seeks — a referral to a surgeon for corrective surgery — prospective relief is inappropriate. (*Id.* at 5-6.) Plaintiff did not file a response but presumably stands on his allegations as pleaded in the complaint.

Supervisory liability may be established under Section 1983 “where the supervisor ‘was personally involved in the constitutional deprivation or a sufficient causal connection exists between the supervisor’s unlawful conduct and the constitutional violation.’” *Edgerly v. City and County of San Francisco*, 599 F.3d 946, 961 (9th Cir. 2010) (quoting *Lolli v. County of Orange*,

351 F.3d 410, 418 (9th Cir. 2003)). A supervisor may also be liable “for his own culpable action or inaction in the training, supervision or control of his subordinates; for his acquiescence in the constitutional deprivation; or for conduct that showed a reckless or callous indifference to the rights of others.” *Starr v. Baca*, 652 F.3d 1202, 1208 (9th Cir. 2011) (quoting *Watkins v. City of Oakland*, 145 F.3d 1087, 1093 (9th Cir. 1998)).

Here, Plaintiff alleges that Washburn and Peters, the then-current EOCI superintendent and ODOC director, respectively, knew for a period of years that EOCI did not have a physician or other sufficiently qualified personnel, but nevertheless failed to ensure that EOCI was properly staffed to provide constitutionally adequate medical care to individuals in custody. Liberally construed, Plaintiff adequately alleges that Washburn and Peters both acquiesced to the constitutional deprivation that ultimately befell Plaintiff and otherwise showed a reckless or callous indifference to the rights of individuals in custody at EOCI. The exact contours of Washburn and Peters’ knowledge and responsibilities with respect to staffing at EOCI is more appropriately considered in a motion for summary judgment, and the Court, at this early stage, is satisfied that Plaintiff’s allegations are sufficient to require Defendants to file an answer. The Court thus denies Defendants’ motion to dismiss as to Washburn and Peters.

With respect to Nurse Blood, whether she has authority to refer Plaintiff to an outside surgeon is also more appropriately addressed on summary judgment. Accordingly, the Court declines to dismiss the official capacity claims against Nurse Blood at this early stage of the litigation.

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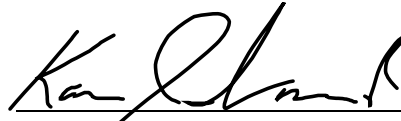
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CONCLUSION

Based on the foregoing, the Court DENIES Defendants' Motion to Dismiss (ECF No. 12) and ORDERS Defendants to file an answer within fourteen days of the date of this order. *See* [FED. R. Civ. P. 12\(a\)\(4\)\(A\)](#).

IT IS SO ORDERED.

DATED this 6th day of June, 2023.



Karin J. Immergut
United States District Judge