

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RONALD ADAMS, CASE NO. 1:05-cv-00671-OWW-WMW (PC)

Plaintiff,

FINDINGS AND RECOMMENDATION TO
DISMISS ALL CLAIMS

v. P.L. VAZQUEZ, et al., (Doc. 19)

Defendants.

I. FINDINGS**A. Procedural History**

Ronald Adams (“Plaintiff”) is a state prisoner proceeding pro se. The Court granted Plaintiff’s motion to proceed in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed his complaint on May 24, 2005. (Doc. 1.) Prior to screening, Plaintiff filed the First Amended Complaint. (Doc. 14.) The First Amended Complaint was screened and dismissed with leave to amend. (Doc. 18.) On July 21, 2008, Plaintiff filed the Second Amended Complaint which is presently before the Court. (Doc. 19.)

B. 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 raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.

1 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
2 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
3 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. §1915(e)(2)(B)(ii).

4 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon
5 which relief may be granted if it appears beyond doubt that Plaintiff can prove no set of facts in
6 support of the claim or claims that would entitle him to relief. See Hishon v. King & Spalding,
7 467 U.S. 69, 73 (1984), *citing Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); see also Palmer v.
8 Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a
9 complaint under this standard, the court must accept as true the allegations of the complaint in
10 question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the
11 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor.
12 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

13 **C. Plaintiff's First Amended Complaint**

14 Plaintiff is currently a state prisoner at California State Prison Sacramento (“SAC”) in
15 Represa, California. Plaintiff was formerly imprisoned at California State Prison, Los Angeles
16 County (“LAC”) in Lancaster, California and Wasco State Prison (“WSP”) in Wasco, California
17 -- where the acts he complains of occurred.

18 Plaintiff names the following defendants: WSP Warden P.L. Vazquez; Health
19 Coordinator C. Gipson; Health Care Manager M. Nonger; Dr. Shen; Chief Medical Officers Dr.
20 Attygalla and J. Fitter; Dietician J. Ng; Appeal Examiner P. Enriquez; California Department of
21 Corrections and Rehabilitation Secretary James Tilton; and Dr. P. Fortaleza. Plaintiff seeks
22 monetary damages and injunctive relief.

23 Plaintiff alleges that he suffers from diabetes, a heart ailment (with history of a heart
24 attack), hypertension, and a food allergy to peanuts. For over five years prior to the times at issue
25 in this case, he had not eaten red meat at all because of the dangers it posed to his heart and
26 hypertension conditions. (Doc. 19, pg. 10.) As a result, he required oral medication for his
27 diabetes and medical chronos (as written by Dr. McArthur at LAC) to be allowed to obtain two
28 lunch sacks each day so that he could discard any items containing meat and/or peanut butter,

1 while eating double amounts of the remaining items. Plaintiff claims that, while at LAC, he filed
2 a medical inmate appeal and was examined at the first level by Dr. Attygalla. (*Id.* at pg. 6.)
3 Plaintiff explained to Dr. Attygalla that he needed to have double lunch chronos to have extra
4 food on hand to eat since his diabetic medications could cause his blood sugar levels to drop
5 dangerously, which could cause diabetic shock and death. Plaintiff's appeal was partially granted
6 in as much as he had seen Dr. Attygalla. Dr. Attygalla stated that Plaintiff did not require an
7 extra lunch or nourishment bag because he was not dependent on insulin. (*Id.*) Plaintiff
8 appealed to Staff Physician Dr. P. Fortaleza and CMO J. Fitter at the second level. However,
9 while Plaintiff's second level appeal was pending, he was transferred to WSP. (Doc. 19, pg. 6.)
10 Dr. Fortaleza and Fitter explained that Plaintiff could address his concerns at WSP. (*Id.*) After
11 transfer to WSP, Plaintiff's appeal was sent to the Director's Level and assigned to Appeals
12 Examiner P. Enriquez – who partially granted Plaintiff's appeal, ordering that he be evaluated at
13 WSP to determine whether chronos he had received for peanut allergy and double lunches
14 (among others) should be renewed. In April of 2004, WSP medical staff refused to perform
15 peanut allergy tests and WSP staff began to “press” Plaintiff about his two lunch chrono. (*Id.* at
16 pg. 7.) At WSP, Plaintiff met with Dietician Ng who said she would make a request that his
17 double lunch chrono be renewed, but it was not renewed. (*Id.* at pg. 9.) Plaintiff filed an
18 grievance at WSP seeking the two lunch chronos. Plaintiff again met with Dietician Ng who
19 understood and indicated she would recommend a two lunch chrono and a no peanut butter
20 chrono. Dr. Shen thereafter advised that he would rewrite the double lunch chrono, and
21 confirmed that Plaintiff's tests came back as allergic to peanut products. (*Id.* at pg. 12.) In that
22 first level response to Plaintiff's appeal at WSP, C. Gipson failed to write everything that Ng
23 wrote in her notice or report and erroneously reported that Dr. Shen did not issue an extra lunch
24 chrono as recommended by Ng. (*Id.*) At the second level, Plaintiff's appeal was answered by M.
25 Songer who erroneously wrote that no extra sack lunch was authorized and that Dr. Shen had
26 required monitoring of Plaintiff's weight. (*Id.* at pp. 12-13.) P. Enriquez was also assigned to
27 the examiner on this appeal at the third level. P. Enriquez altered Plaintiff's statements and
28 issued a decision that no medical documentation was provided to show extra food was granted.

1 (Id.) Further, P. Enriquez errantly failed to investigate Plaintiff's case and erroneously noted that
2 Dr. Shen wanted to monitor Plaintiff's weight when Dr. Shen had never weighed Plaintiff. P.
3 Enriquez denied Plaintiff's appeal at the Director's Level. (Id. at pp. 13-14.) Plaintiff stopped
4 taking his diabetes medication because he was unable to obtain two lunches or other diabetic
5 nourishment snack. (Id. at pg. 16.)

6 Plaintiff fails to state a cognizable claim against any defendants. Since Plaintiff was
7 given the applicable legal standards in the Court's screening order it appears Plaintiff is unable to
8 present factual allegations to state a cognizable claim.¹ Plaintiff's Second Amended Complaint
9 suffers from a number of uncorrectable deficiencies which now require dismissal with prejudice.

10 **D. Plaintiff's Claims**

11 **1. Deliberate Indifference to Serious Medical Needs**

12 Plaintiff's first claim for relief is against Defendants Dr. Shen, Dietician Ng, C. Gipson,
13 M. Songer, Dr. Fortaleza, Fitter, Dr. Attygalla, P. Enriquez, Secretary Tilton, and Warden
14 Vazquez.

15 To constitute cruel and unusual punishment in violation of the Eighth Amendment, prison
16 conditions must involve "the wanton and unnecessary infliction of pain." Rhodes v. Chapman,
17 452 U.S. 337, 347 (1981). A prisoner's claim of inadequate medical care does not rise to the
18 level of an Eighth Amendment violation unless (1) "the prison official deprived the prisoner of
19 the 'minimal civilized measure of life's necessities,'" and (2) "the prison official 'acted with
20 deliberate indifference in doing so.'" Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004)
21 (quoting Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002) (citation omitted)). A prison
22 official does not act in a deliberately indifferent manner unless the official "knows of and
23 disregards an excessive risk to inmate health or safety." Farmer v. Brennan, 511 U.S. 825, 834
24 (1994). Deliberate indifference may be manifested "when prison officials deny, delay or
25 intentionally interfere with medical treatment," or in the manner "in which prison physicians
26 provide medical care." McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on

27
28 ¹ See Order Dismissing Complaint With Leave to File an Amended Complaint. Doc. 18.

1 other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc).

2 Deliberate indifference can be manifested by intentionally denial or delay of access to
3 medical care, or intentionally interfering with the treatment once prescribed. Estelle, 429 U.S. at
4 104-05. However, where a prisoner alleges a denial of, or delay in receiving medical treatment,
5 the prisoner must allege that the delay led to further injury. McGuckin v. Smith, 974 F.2d 1050,
6 1060 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133,
7 1136 (9th Cir. 1997); Shapely v. Nevada Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th
8 Cir. 1985) citing Estelle v. Gamble, 429 U.S. 97, 106 (1976) (no claim for deliberate medical
9 indifference unless denial of medical care was harmful).

10 Plaintiff clearly alleges that he needed and had difficulty obtaining chronos for a double
11 lunch and to avoid peanut products. However, he fails to state allegations to show any harm that
12 he actually suffered as a result of any such delay in obtaining these chronos. Plaintiff makes
13 various non-specific allegations that low blood sugar level “could” cause diabetic shock and lead
14 to death (Doc. 19, pg. 5); “could” lead to death (Id. at pg. 15.); and “can” cause death (Id.).
15 However, despite having been previously advised that he has no cognizable claim without
16 causation of injury, Plaintiff fails, and thus appears wholly unable to, allege any injury that he
17 sustained as a result of the delay in obtaining chronos for a double lunch and to avoid peanut
18 products. Thus, Plaintiff fails, and appears unable to state cognizable claims against Defendants
19 Dr. Shen, Dietician J. Ng, Health Program Coordinator C. Gipson, Health Care Manager M.
20 Songer, Dr. P. Fortaleza, CMO J. Fitter, Dr. Attygalla, Appeals Examiner P. Enriquez, CDCR
21 Secretary Tilton, and Warden Vazquez for being deliberately indifferent to his serious medical
22 needs for any delay/denial of chronos for a double lunch and to avoid peanut products. All such
23 claims are properly dismissed.

24 **2. Due Process – Medical Inmate Appeals**

25 Plaintiff’s second claim for relief is based on allegations that Dr. Shen, C. Gipson, M.
26 Songer, P. Fortaleza, J. Fitter, and P. Enriquez violated his due process rights in the processing,
27 and reviewing of his 602 inmate appeals related to the delay/denial of chronos for a double lunch
28 and to avoid peanut products.

1 The Due Process Clause protects prisoners from being deprived of liberty without due
2 process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). In order to state a cause of
3 action for deprivation of due process, a plaintiff must first establish the existence of a liberty
4 interest for which the protection is sought. “States may under certain circumstances create liberty
5 interests which are protected by the Due Process Clause.” Sandin v. Conner, 515 U.S. 472, 483-
6 84 (1995). Liberty interests created by state law are generally limited to freedom from restraint
7 which “imposes atypical and significant hardship on the inmate in relation to the ordinary
8 incidents of prison life.” Sandin, 515 U.S. at 484.

9 “[A prison] grievance procedure is a procedural right only, it does not confer any
10 substantive right upon the inmates.” Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993)
11 (citing Azeez v. DeRobertis, 568 F. Supp. 8, 10 (N.D. Ill. 1982)); see also Ramirez v. Galaza,
12 334 F.3d 850, 860 (9th Cir. 2003) (no liberty interest in processing of appeals because no
13 entitlement to a specific grievance procedure); Massey v. Helman, 259 F.3d 641, 647 (7th Cir.
14 2001) (existence of grievance procedure confers no liberty interest on prisoner); Mann v. Adams,
15 855 F.2d 639, 640 (9th Cir. 1988). “Hence, it does not give rise to a protected liberty interest
16 requiring the procedural protections envisioned by the Fourteenth Amendment.” Azeez v.
17 DeRobertis, 568 F. Supp. at 10; Spencer v. Moore, 638 F. Supp. 315, 316 (E.D. Mo. 1986).

18 Actions in reviewing prisoner’s administrative appeal cannot serve as the basis for
19 liability under a § 1983 action. Buckley, 997 F.2d at 495. The argument that anyone who knows
20 about a violation of the Constitution, and fails to cure it, has violated the Constitution himself is
21 not correct. “Only persons who cause or participate in the violations are responsible. Ruling
22 against a prisoner on an administrative complaint does not cause or contribute to the violation. A
23 guard who stands and watches while another guard beats a prisoner violates the Constitution; a
24 guard who rejects an administrative complaint about a completed act of misconduct does not.”
25 George v. Smith, 507 F.3d 605, 609-10 (7th Cir. 2007) citing Greeno v. Daley, 414 F.3d 645,
26 656-57 (7th Cir. 2005); Reed v. McBride, 178 F.3d 849, 851-52 (7th Cir. 1999); Vance v. Peters,
27 97 F.3d 987, 992-93 (7th Cir. 1996).

28 Thus, since he has neither a liberty interest, nor a substantive right in inmate appeals,

1 Plaintiff fails, and is unable to state a cognizable claim purely for the processing and/or
2 reviewing of his inmate appeals. Plaintiff's claims must next be evaluated for stating the
3 elements for a claim under the Eight Amendment for deliberate indifference to his serious
4 medical needs against those medical personnel who were involved in reviewing his inmate
5 appeals. If Plaintiff states a cognizable claim against a defendant for deliberate indifference to
6 his serious medical needs, he will likely also be able to state a cognizable claim against
7 defendants with medical training if they reviewed and ruled against Plaintiff in his medical
8 grievances/appeals on that same issue.

9 Since Plaintiff fails to show that Defendant P. Enriquez has any medical training, he has
10 neither a liberty interest, nor a substantive right that P. Enriquez could have infringed upon via
11 review/processing his medical appeals. Further, this Court has found that at least one Appellate
12 Circuit has held that “[o]nce a [non-medical] prison grievance examiner becomes aware of
13 potential mistreatment, the Eight Amendment does not require him or her to do more than
14 ‘review [the prisoner’s] complaints and verif[y] with the medical officials that [the prisoner] was
15 receiving treatment.” Greeno, 414 F.3d at 656 citing Spruill v. Gillis, 372 F.3d 218, 236 (3rd
16 Cir. 2004) (non-physician defendants cannot “be considered deliberately indifferent simply
17 because they failed to respond directly to the medical complaints of a prisoner who was already
18 being treated by the prison doctor” and if “a prisoner is under the care of medical experts . . . a
19 non-medical prison official will generally be justified in believing that the prisoner is in capable
20 hands.”) This Court concurs with the analysis in Greeno and Spruill. Thus, Plaintiff fails to state
21 a cognizable claim against Defendant P. Enriquez for his/her actions and/or involvement in
22 reviewing, processing, and/or ruling on his medical inmate appeals.

23 As previously discussed, Plaintiff fails to state a cognizable claim against Dr. Shen, C.
24 Gipson, M. Songer, P. Fortaleza, and J. Fitter for the delay/denial of chronos for a double lunch
25 and to avoid peanut products. Plaintiff thus also fails to state cognizable claims against
26 Defendants Dr. Shen, C. Gipson, M. Songer, P. Fortaleza, and J. Fitter for deliberate indifference
27 to Plaintiff's serious medical need via their actions and/or involvement in reviewing, processing,
28 and/or ruling on Plaintiff's medical inmate appeals regarding the delay/denial of chronos for a

1 double lunch and to avoid peanut products. All such claims are properly dismissed.

2 **3. Cruel and Unusual Punishment**

3 Plaintiff's third claim for relief is against Defendants Dr. Shen, C. Gipson, M. Songer, P.
4 Fortaleza, J. Fitter, Dr. Attygalla, J. Ng, P. Enriquez, Secretary Tilton, and Warden Vazquez for
5 inflicting cruel and unusual punishment in violation of the Eighth and Fourth Amendments.

6 One who makes a claim under the cruel and unusual punishments clause must show that
7 the state has created risk or inflicted pain pointlessly. "After incarceration, only the unnecessary
8 and wanton infliction of pain ... constitutes cruel and unusual punishment forbidden by the
9 Eighth Amendment." (See Johnson v. Phelan, 69 F.3d 144, 147 (1995) citing: Whitley v. Albers,
10 475 U.S. 312, 319 (1986) (internal quotations omitted) see also Rhodes v. Chapman, 452 U.S.
11 337 (1981); Wilson v. Seiter 501 U.S. 294, 289-300 (1991); Helling v. McKinney 509 U.S. 25
12 (1993). Plaintiff fails to state any allegations to describe his experiencing pain, let alone being
13 subjected any unnecessary and wanton pain. Thus, Plaintiff fails and is unable to state
14 cognizable claims against Defendants Dr. Shen, C. Gipson, M. Songer, P. Fortaleza, J. Fitter, Dr.
15 Attygalla, J. Ng, P. Enriquez, Secretary Tilton, and Warden Vazquez for inflicting cruel and
16 unusual punishment in violation of the Eighth Amendment. All such claims are properly
17 dismissed.

18 The Fourth Amendment does not provide constitutional protection from cruel and
19 unusual punishment. Thus, Plaintiff fails and is unable to state cognizable claims against
20 Defendants Dr. Shen, C. Gipson, M. Songer, P. Fortaleza, J. Fitter, Dr. Attygalla, J. Ng, P.
21 Enriquez, Secretary Tilton, and Warden Vazquez for inflicting cruel and unusual punishment in
22 violation of the Fourth Amendment. All such claims are properly dismissed.

23 **4. Supervisory Liability**

24 Plaintiff named defendants WSP Warden P.L. Vazquez; Health Coordinator C. Gipson;
25 Health Care Manager M. Nonger; Chief Medical Officers Dr. Attygalla and J. Fitter; Appeal
26 Examiner P. Enriquez; and CDCR Secretary James Tilton -- each of whom holds supervisory
27 positions.

28 Supervisory personnel are generally not liable under section 1983 for the actions of their

1 employees under a theory of respondeat superior and, therefore, when a named defendant holds a
2 supervisorial position, the causal link between him and the claimed constitutional violation must
3 be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v.
4 Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). To state a claim
5 for relief under section 1983 based on a theory of supervisory liability, plaintiff must allege some
6 facts that would support a claim that supervisory defendants either: personally participated in the
7 alleged deprivation of constitutional rights; knew of the violations and failed to act to prevent
8 them; or promulgated or “implemented a policy so deficient that the policy ‘itself is a repudiation
9 of constitutional rights’ and is ‘the moving force of the constitutional violation.’” Hansen v.
10 Black, 885 F.2d 642, 646 (9th Cir. 1989) (internal citations omitted); Taylor v. List, 880 F.2d
11 1040, 1045 (9th Cir. 1989). Although federal pleading standards are broad, some facts must be
12 alleged to support claims under section 1983. See Leatherman v. Tarrant County Narcotics Unit,
13 507 U.S. 163, 168 (1993).

14 As discussed above, Plaintiff has not alleged any facts indicating that defendants WSP
15 Warden P.L. Vazquez; Health Coordinator C. Gipson; Health Care Manager M. Nonger; Chief
16 Medical Officers Dr. Attygalla and J. Fitter; Appeal Examiner P. Enriquez; and CDCR Secretary
17 James Tilton personally participated in deprivation(s) of his constitutional rights; knew of the
18 violations and failed to act to prevent them; or promulgated or “implemented a policy so
19 deficient that the policy ‘itself is a repudiation of constitutional rights’ and is ‘the moving force
20 of the constitutional violation.’” Hansen, 885 F.2d at 646. Plaintiff thus fails to state cognizable
21 claims against WSP Warden P.L. Vazquez; Health Coordinator C. Gipson; Health Care Manager
22 M. Nonger; Chief Medical Officers Dr. Attygalla and J. Fitter; Appeal Examiner P. Enriquez;
23 and CDCR Secretary James Tilton.

24 **5. Injunctive Relief**

25 Plaintiff seeks injunctive relief. 18 U.S.C. § 3626(a)(1)(A) provides in relevant part,
26 “Prospective relief in any civil action with respect to prison conditions shall extend no further
27 than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs.
28 The court shall not grant or approve any prospective relief unless the court finds that such relief

1 is narrowly drawn, extends no further than necessary to correct the violation of the Federal right,
2 and is the least intrusive means necessary to correct the violation of the Federal right.” Plaintiff
3 fails to state a cognizable claim for violation of any of his Federal rights. Thus, there is no need
4 for the Court to address Plaintiff’s request for prospective injunctive relief at this time. Further,
5 because plaintiff is no longer incarcerated at WSP, his claim for injunctive relief at that facility is
6 moot. Dilley v. Gunn, 64 F.3d 1365, 1368 (9th Cir. 1995); Johnson v. Moore, 948 F.2d 517, 519
7 (9th Cir. 1991).

8 **II. RECOMMENDATION**

9 The Court finds that Plaintiff has failed and is unable to state a cognizable claim against
10 any of the named defendants.

11 Accordingly, it is HEREBY RECOMMENDED that this entire action be dismissed with
12 prejudice.

13 These Findings and Recommendations will be submitted to the United States District
14 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).

15 Within **thirty (30) days** after being served with these Findings and Recommendations,
16 Plaintiff may file written objections with the Court. The document should be captioned
17 “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that
18 failure to file objections within the specified time may waive the right to appeal the District
19 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21
22 IT IS SO ORDERED.

23 **Dated: April 8, 2009**

24 **/s/ William M. Wunderlich**
UNITED STATES MAGISTRATE JUDGE