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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

WILLIAM GONZALEZ,

CASE NO. 1:05-cv-01039-SMS PC

Plaintiff,

ORDER DISMISSING ACTION, WITH
PREJUDICE, FOR FAILURE TO STATE
ANY CLAIMS, AND DIRECTING THE
CLERK’S OFFICE TO ENTER JUDGMENT

v.

JAMES YATES, et al.,

(Doc. 25)

Defendants.

_____ /

Screening Order

I. Procedural History

Plaintiff William Gonzalez, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on August 12, 2005. On November 7, 2006, the Court dismissed Plaintiff’s complaint, with leave to amend, for failure to state a claim. Plaintiff filed a first amended complaint on December 11, 2006, and on October 3, 2008, the Court issued an order finding that Plaintiff’s amended complaint stated a claim against Defendant Brewer but did not state any other claims, and dismissing the complaint with leave to amend. Plaintiff filed a second amended complaint on December 31, 2008, and on November 24, 2009, the Court dismissed the second amended complaint for failure to state any claims. Because Plaintiff had previously stated one cognizable claim but omitted facts in his second amended complaint, the Court gave Plaintiff

1 another opportunity to amend.¹ Now pending before the Court is Plaintiff's third amended
2 complaint, filed March 11, 2010.

3 **II. Screening Requirement**

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

12 A complaint must contain “a short and plain statement of the claim showing that the pleader
13 is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
14 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
15 do not suffice.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (citing Bell Atlantic Corp. v.
16 Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff must set forth “sufficient
17 factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” Iqbal, 129 S.Ct. at
18 1949 (quoting Twombly, 550 U.S. at 555). Facial plausibility demands more than the mere
19 possibility that a defendant committed misconduct, Iqbal at 1950, and while factual allegations are
20 accepted as true, legal conclusion are not, id. at 1949.

21 **III. Plaintiff's Claims**

22 Plaintiff, who was housed at Pleasant Valley State Prison (PVSP) in Coalinga during the
23 relevant events, brings this action against Warden James Yates, Chief Medical Officer H.D. Sacks,
24 Medical Technical Assistants Haven and Brewer, and Does 1-20. Plaintiff alleges a claim for
25 violation of the Eighth Amendment of the United States Constitution arising out of an injury he

26
27 ¹ In addition, there had been an intervening and “significant” change in the pleading standard to which
28 Plaintiff's complaint is held. Moss v. U.S. Secret Service, 572 F.3d 962, 972 (9th Cir. 2009). The order granting
Plaintiff leave to file a third amended complaint set forth the new standard for assessing whether a complaint states a
claim.

1 sustained and the medical care subsequently provided, a conspiracy claim under 42 U.S.C. § 1986,
2 and a claim for intentional infliction of emotional distress under California law.

3 **A. Medical Care Claims**

4 **1. Allegations**

5 On September 30, 2003, Plaintiff slipped on a wet floor in his housing unit at PVSP and fell,
6 injuring his head, neck, and body. Defendant Haven responded to the scene and began to manipulate
7 and twist Plaintiff's neck, continuing to do so even though Plaintiff told him it was causing
8 excruciating pain and discomfort. As a result of the "unreasonable" medical care rendered, Plaintiff
9 ended up having to wear a cervical collar for an extended period of time, and continues to suffer
10 from pain and discomfort. (Doc. 25, 3rd Amend. Comp., ¶20.)

11 Plaintiff was transported to the prison's hospital following his fall, and was seen by Dr.
12 Kushner. Plaintiff was hospitalized until October 2, 2003. Upon discharge, Plaintiff was prescribed
13 Motrin, 800 mg. twice a day, for back pain, and told to see a medical technical assistant if he got a
14 headache. (Ex. 1.)

15 On October 3, 2003, Plaintiff informed Defendant Brewer that he was experiencing extreme
16 pain and discomfort, and showed Brewer his discharge instructions. Defendant Brewer refused to
17 provide assistance, thereby denying Plaintiff "access to reasonable medical care." (3rd Amend.
18 Comp., ¶23.) Another unidentified staff member told Plaintiff he was on the staff's "shit list." (*Id.*)

19 On November 24, 2003, Dr. Kushner issued a chrono requiring that Plaintiff be given a lower
20 bunk but the chrono was not sent to Plaintiff's housing unit and he remained on an upper bunk. (Ex.
21 2.) Also, on December 2, 2003, Plaintiff was diagnosed with vertigo and given medication, but he
22 remained assigned to an upper bunk. (Ex. 3.) On December 24, 2003, Plaintiff fell from the upper
23 bunk, exacerbating his injuries.

24 **2. Legal Standard**

25 To constitute cruel and unusual punishment in violation of the Eighth Amendment, prison
26 conditions must involve "the wanton and unnecessary infliction of pain." *Rhodes v. Chapman*, 452
27 U.S. 337, 347 (1981). A prisoner's claim of inadequate medical care does not rise to the level of an
28 Eighth Amendment violation unless (1) "the prison official deprived the prisoner of the 'minimal

1 civilized measure of life’s necessities,” and (2) “the prison official ‘acted with deliberate
2 indifference in doing so.” Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) (quoting Hallett
3 v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002) (citation omitted)).

4 A prison official does not act in a deliberately indifferent manner unless the official “knows
5 of and disregards an excessive risk to inmate health or safety.” Farmer v. Brennan, 511 U.S. 825,
6 834, 114 S.Ct. 1970 (1994). Deliberate indifference may be manifested “when prison officials deny,
7 delay or intentionally interfere with medical treatment,” or in the manner “in which prison physicians
8 provide medical care.” McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other
9 grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). Where a
10 prisoner is alleging a delay in receiving medical treatment, the delay must have led to further harm
11 in order for the prisoner to make a claim of deliberate indifference to serious medical needs.
12 McGuckin, 974 F.2d at 1060 (citing Shapely v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404,
13 407 (9th Cir. 1985)).

14 3. Discussion

15 Plaintiff’s allegations falls short of stating any plausible claims for violation of the Eighth
16 Amendment arising from constitutionally inadequate medical care. Iqbal at 1949-50; Moss at 969.
17 “Deliberate indifference is a high legal standard.” Toguchi, 391 F.3d at 1060. “Under this standard,
18 the prison official must not only ‘be aware of the facts from which the inference could be drawn that
19 a substantial risk of serious harm exists,’ but that person ‘must also draw the inference.’” Toguchi
20 at 1057 (quoting Farmer, 511 U.S. at 837).

21 Plaintiff’s factual allegations do not support a claim that in manipulating Plaintiff’s neck at
22 the scene of his injury, Defendant Haven knowingly disregarded an excessive risk to Plaintiff’s
23 health. Farmer, 511 U.S. at 837. Further, Plaintiff’s conclusory allegation that Defendant Brewer
24 failed to provide assistance is insufficient to support a claim that Defendant Brewer acted with
25 deliberate indifference, Farmer at 837, or that Plaintiff suffered further harm as a result, McGuckin
26 at 1060 (citing Shapely v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985)).
27 Finally, the failure to ensure that Plaintiff was given a lower bunk is not linked to any particular staff
28 member.

1 Defendants Yates and Sachs hold supervisory positions. Under section 1983, Plaintiff must
2 show that a defendant holding a supervisory position personally participated in the deprivation of
3 his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). There is no respondeat superior
4 liability, and each defendant is only liable for his own misconduct. Iqbal at 1948-49. A supervisor
5 may be held liable for the constitutional violations of his subordinates only if he “participated in or
6 directed the violations, or knew of the violations and failed to act to prevent them.” Taylor v. List,
7 880 F.2d 1040, 1045 (9th Cir. 1989); also Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009);
8 Preschooler II v. Clark County School Board of Trustees, 479 F.3d 1175, 1182 (9th Cir. 2007);
9 Harris v. Roderick, 126 F.3d 1189, 1204 (9th Cir. 1997).

10 Here, there are no facts suggesting that Defendants Yates and Sachs were personally involved
11 in Plaintiff’s medical care. Rather, Plaintiff is attempting to impose liability on Defendants based
12 on the failings of subordinate medical staff. There is no indication that Defendants were personally
13 involved in the alleged violation of Plaintiff’s rights, and Defendants may not be held liable under
14 section 1983 for constitutional violations committed by subordinate staff members.

15 Plaintiff’s allegations do not show more than the mere possibility of misconduct by
16 Defendants Haven and Brewer, and do not show any misconduct by Defendants Yates and Sachs.
17 Plaintiff therefore fails to state a claim upon which relief may be granted for violation of the Eighth
18 Amendment. Iqbal at 1949-50; Moss at 969. Plaintiff was previously given the applicable legal
19 standards and permitted multiple opportunities to amend. Lopez v. Smith, 203 F.3d 1122, 1130 (9th
20 Cir. 2000); Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Accordingly, Plaintiff’s claim
21 shall be dismissed, with prejudice.

22 **B. Conspiracy Claim**

23 Plaintiff alleges that Defendants conspired against him in violation of section 1986. “Section
24 1986 authorizes a remedy against state actors who have negligently failed to prevent a conspiracy
25 that would be actionable under § 1985.” Cerrato v. San Francisco Cmty. Coll. Dist., 26 F.3d 968,
26 971 n.7 (9th Cir. 1994). A viable section 1986 claim is dependant upon the existence of a section
27 1985 claim, McCalden v. California Library Assoc., 955 F.2d 1214, 1223 (9th Cir. 1992), and a

28 ///

1 viable section 1985 claim is in turn dependent upon the existence of a section 1983 claim, Thornton
2 v. City of St. Helens, 425 F.3d 1158, 1168 (9th Cir. 2005).

3 Other deficiencies notwithstanding, Plaintiff's third amended complaint does not state a
4 cognizable claim for violation of the Eighth Amendment.² Therefore, Plaintiff may not pursue the
5 claim that Defendants conspired to violate his Eighth Amendment rights. Plaintiff's claim fails as
6 a matter of law and shall be dismissed, with prejudice.

7 **C. IIED Claim Against All Defendants**

8 Finally, Plaintiff alleges a claim for intentional infliction of emotional distress (IIED) arising
9 out of the denial of access to reasonable, adequate medical care. The elements of IIED are: (1)
10 extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard
11 of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme
12 emotional distress; and (3) actual and proximate causation of the emotional distress by the
13 defendant's outrageous conduct. Simo v. Union of Needletrades, Industrial & Textile Employees,
14 322 F.3d 602, 621-22 (9th Cir. 2003) (citing to Christensen v. Superior Court, 54 Cal.3d 868, 903
15 (1991)) (quotations omitted).

16 Plaintiff's allegations simply do not support a claim that Defendants acted in an extreme and
17 outrageous manner designed to cause, or with the reckless disregard of the probability of causing,
18 emotional distress. Because the deficiency at issue is not capable of being cured, the claim is
19 dismissed, with prejudice, for failure to state a claim.³

20 **IV. Conclusion and Order**

21 Plaintiff's third amended complaint fails to state any claims upon which relief may be
22 granted. Plaintiff was previously given notice of the deficiencies and the opportunity to amend, and
23

24 ² An allegation of racial or class-based discrimination is required to state a claim for relief under either the
25 second clause of section 1985(2) or section 1985(3), and Plaintiff's complaint is devoid allegations suggesting
26 discriminatory conduct. Bretz v. Kelman, 773 F.2d 1026, 1028-1030 (9th Cir. 1985).

27 ³ Had the claim been either cognizable or capable of being cured through amendment, dismissal without
28 prejudice for lack of subject matter jurisdiction would have been appropriate. 28 U.S.C. § 1367(a); Herman Family
Revocable Trust v. Teddy Bear, 254 F.3d 802, 805 (9th Cir. 2001).

1 based on the record in this case, further leave to amend is not warranted. Lopez, 203 F.3d at 1130;
2 Noll, 809 F.2d at 1448-49. It is HEREBY ORDERED that:

- 3 1. This action is dismissed, with prejudice, for failure to state a claim;
- 4 2. This dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g); and
- 5 3. The Clerk's Office shall enter judgment.

6
7 IT IS SO ORDERED.

8 **Dated:** July 13, 2010

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE