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6 **UNITED STATES DISTRICT COURT**
78 EASTERN DISTRICT OF CALIFORNIA
910 DARRYL EUGENE TAYLOR, CASE NO. 1:07-cv-00459-AWI-SMS PC
11 v. Plaintiff, FINDING AND RECOMMENDATION
12 JAMES A. YATES, et al., RECOMMENDING DISMISSAL OF ACTION
13 Defendants. (Doc. 24)
14 THIRTY-DAY OBJECTION DEADLINE15 **Findings and Recommendations Following Screening of Third Amended Complaint**16 **I. Procedural History**17 Plaintiff Darryl Eugene Taylor, a state prisoner proceeding pro se and in forma pauperis, filed
18 this civil rights action pursuant to 42 U.S.C. § 1983 on March 23, 2007. Plaintiff filed a first
19 amended complaint as a matter of right on July 10, 2008, Fed. R. Civ. P. 15(a), and on May 21,
20 2009, the Court found that Plaintiff's amended complaint stated cognizable claims against some but
21 not all of the defendants, 28 U.S.C. § 1915A. The Court dismissed the amended complaint, with
22 leave to amend. On June 19, 2009, Plaintiff filed a second amended complaint, which was dismissed
23 with leave to amend on July 13, 2010.¹ Pending before the Court is Plaintiff's third amended
24 complaint, filed July 26, 2010.25
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27 ¹ After the issuance of the first screening order, there was a "significant change" in the standard under which
28 pleadings are analyzed. Moss v. U.S. Secret Service, 572 F.3d 962, 972 (9th Cir. 2009). Due to this change and
because the Court previously informed Plaintiff that some of his claims were cognizable, the Court granted Plaintiff
one final opportunity to amend. Moss, 572 F.3d at 972; Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

1 **II. Screening Requirement**

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

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

19 **III. Plaintiff’s Eighth Amendment Claim**

20 **A. Summary of Third Amended Complaint**

21 Plaintiff, who is currently incarcerated at Kern Valley State Prison, brings this action against
22 Warden James Yates, Chief Medical Officer Alvarnez, and dentist Dr. A. Verdugo for violating his
23 rights under the Eighth Amendment of the United States Constitution while he was housed at
24 Pleasant Valley State Prison (PVSP). Plaintiff, who suffers from pyorrhea, alleges that while he was
25 housed at the California Correctional Institution (CCI), a dental treatment plan was prescribed for
26 him but after he transferred to PVSP, Defendants Yates and Alvarnez failed to follow the course of

1 treatment prescribed at CCI.² Plaintiff filed an inmate appeal requesting that the treatment plan be
2 followed but the appeals coordinator refused to resolve the appeal on its merits.

3 **B. Discussion**

4 To state a claim under section 1983, Plaintiff must show that each named defendant
5 personally participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th
6 Cir. 2002). There is no respondeat superior liability, and each defendant is only liable for his own
7 misconduct. Iqbal at 1948-49. A supervisor may be held liable for the constitutional violations of
8 his subordinates only if he “participated in or directed the violations, or knew of the violations and
9 failed to act to prevent them.” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989); also Corales v.
10 Bennett, 567 F.3d 554, 570 (9th Cir. 2009); Preschooler II v. Clark County School Board of
11 Trustees, 479 F.3d 1175, 1182 (9th Cir. 2007); Harris v. Roderick, 126 F.3d 1189, 1204 (9th Cir.
12 1997).

13 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate
14 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091, 1096
15 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 295 (1976)). The two part
16 test for deliberate indifference requires the plaintiff to show (1) “‘a serious medical need’ by
17 demonstrating that ‘failure to treat a prisoner’s condition could result in further significant injury or
18 the unnecessary and wanton infliction of pain,’” and (2) “the defendant’s response to the need was
19 deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith, 974 F.2d 1050, 1059
20 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th
21 Cir. 1997) (en banc) (internal quotations omitted)). Deliberate indifference is shown by “a
22 purposeful act or failure to respond to a prisoner’s pain or possible medical need, and harm caused
23 by the indifference.” Id. (citing McGuckin, 974 F.2d at 1060). Where a prisoner is alleging a delay
24 in receiving medical treatment, the delay must have led to further harm in order for the prisoner to
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27 ² In his second amended complaint, Plaintiff alleged that on June 24, 2003, he was diagnosed with advanced
28 chronic periodontitis by Dr. J. A. Smith at CCI. (Doc. 19.) Dr. Smith extracted seven of Plaintiff’s teeth on July 8,
2003, and Plaintiff was provided with dental care at CCI until March 26, 2006, after which time he transferred to
PVSP. (Id.)

1 make a claim of deliberate indifference to serious medical needs. McGuckin at 1060 (citing Shapely
2 v. Nevada Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985)).

3 The failure of prison officials at PVSP to continue with the treatment plan initiated at CCI,
4 without more, does not state a claim for violation of the Eighth Amendment. Toguchi v. Chung, 391
5 F.3d 1051, 1058 (9th Cir. 2004); Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1986); Sanchez
6 v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). Further, Plaintiff's third amended complaint is devoid
7 of any specific facts supporting a claim that Defendants Yates, Alvarnez, and Verdugo “[knew] of
8 and disregard[ed] an excessive risk to [Plaintiff's] health” Farmer v. Brennan, 511 U.S. 825,
9 837, 114 S.Ct. 1970 (1994). Plaintiff has not stated a facially plausible claim for violation of the
10 Eighth Amendment and the Court therefore recommends dismissal of the claim. Fed. R. Civ. P.
11 8(a); Iqbal at 1949-50.

12 **IV. Conclusion and Recommendation**

13 Plaintiff's third amended complaint does not state a claim upon which relief may be granted
14 under section 1983. In light of the deficiencies at issue and the past screening orders, further leave
15 to amend is not warranted. Lopez, 203 F.3d at 1130. The Court HEREBY RECOMMENDS that
16 this action be dismissed, with prejudice, for failure to state a claim.

17 This Finding and Recommendation will be submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30)**
19 **days** after being served with this Finding and Recommendation, Plaintiff may file written objections
20 with the Court. The document should be captioned “Objections to Magistrate Judge's Finding and
21 Recommendation.” Plaintiff is advised that failure to file objections within the specified time may
22 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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24 IT IS SO ORDERED.

25 **Dated: August 2, 2010**

26 /s/ Sandra M. Snyder
27 UNITED STATES MAGISTRATE JUDGE
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