

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DOUGLAS OBUJEN,

Plaintiff,

v.

CDC, et al.,

Defendants.

CASE NO. 1:07-cv-01308-AWI-SMS PC

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF ACTION,
WITH PREJUDICE, FOR FAILURE TO
STATE A CLAIM UNDER SECTION 1983

(Doc. 15)

OBJECTIONS DUE WITHIN THIRTY DAYS

Findings and Recommendations Following Screening of Amended Complaint

I. Screening Requirement

Plaintiff Douglas Obujen is a former state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on September 6, 2007. The Court dismissed Plaintiff’s complaint, with leave to amend, for failure to state a claim on May 15, 2008, and Plaintiff filed an amended complaint on June 13, 2008.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity.¹ 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. § 1915A(b)(1),(2).

///

¹ Plaintiff was incarcerated when he brought this suit.

1 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
2 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S.
3 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a short and
4 plain statement of the claim showing that the pleader is entitled to relief” Fed. R. Civ. P. 8(a).
5 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and the
6 grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the liberal pleading
7 standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330
8 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements
9 of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257
10 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

11 **II. Plaintiff’s Eighth Amendment Medical Care Claim**

12 At the time of the events giving rise to the claim at issue in this action, Plaintiff was housed
13 at Avenal State Prison. Plaintiff alleges a violation of the Eighth Amendment of the United States
14 Constitution against Defendant Doe, who was the Chief Medical Officer at Avenal on or around
15 September 2006. Plaintiff alleges a claim for denial of adequate medical care for pneumonia, Valley
16 Fever, pleurisy, and whooping cough, which caused Plaintiff to lose thirty pounds in two weeks.

17 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate
18 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091, 1096
19 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 295 (1976)). The two part
20 test for deliberate indifference requires the plaintiff to show (1) “‘a serious medical need’ by
21 demonstrating that ‘failure to treat a prisoner’s condition could result in further significant injury or
22 the unnecessary and wanton infliction of pain,’” and (2) “the defendant’s response to the need was
23 deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith, 974 F.2d 1050, 1059
24 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th
25 Cir. 1997) (en banc) (internal quotations omitted)). Deliberate indifference is shown by “a
26 purposeful act or failure to respond to a prisoner’s pain or possible medical need, and harm caused
27 by the indifference.” Id. (citing McGuckin, 974 F.2d at 1060).

28 As Plaintiff was previously notified, Plaintiff is required to show that the named defendant(s)

1 (1) acted under color of state law, and (2) committed conduct which deprived Plaintiff of a federal
2 right. Hydrick v. Hunter, 500 F.3d 978, 987 (9th Cir. 2007). “A person deprives another of a
3 constitutional right, where that person ‘does an affirmative act, participates in another’s affirmative
4 acts, or omits to perform an act which [that person] is legally required to do that causes the
5 deprivation of which complaint is made.’” Id. at 988 (quoting Johnson v. Duffy, 588 F.2d 740, 743
6 (9th Cir. 1978)). “[T]he ‘requisite causal connection can be established not only by some kind of
7 direct, personal participation in the deprivation, but also by setting in motion a series of acts by
8 others which the actor knows or reasonably should know would cause others to inflict the
9 constitutional injury.’” Id. (quoting Johnson at 743-44). Further, “there is no pure *respondeat*
10 *superior* liability under § 1983, [and] a supervisor [may only be held] liable for the constitutional
11 violations of subordinates ‘if the supervisor participated in or directed the violations, or knew of the
12 violations and failed to act to prevent them.’” Id. (quoting Taylor v. List, 880 F.2d 1040, 1045 (9th
13 Cir. 1989)).

14 Plaintiff has not alleged any facts linking Defendant Doe to acts or omissions which support
15 a claim that Defendant acted with deliberate indifference to Plaintiff’s serious medical needs.
16 Generalized allegations of neglect, and that Avenal State Prison knew of the risk of Valley Fever but
17 failed to do anything about it are insufficient to support a claim against Defendant Doe. Although
18 accepted as true, the “[f]actual allegations must be [sufficient] to raise a right to relief above the
19 speculative level” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1965 (2007)
20 (citations omitted). Because Plaintiff has not alleged sufficient facts to support a claim that
21 Defendant Doe “[knew] of and disregard[ed] an excessive risk to [Plaintiff’s] health . . . ,” Plaintiff
22 fails to state a claim against Defendant for violation of the Eighth Amendment. Farmer v. Brennan,
23 511 U.S. 837, 114 S.Ct. 1970 (1994).

24 **III. Conclusion and Recommendation**

25 Plaintiff’s amended complaint fails to state a claim against Defendant Doe for violation of
26 the Eighth Amendment, or for any other federal violation. Because Plaintiff was previously notified
27 of the deficiencies in his claim but did not cure them in his amended complaint, the Court HEREBY
28 ///

1 RECOMMENDS dismissal of this action, with prejudice, for failure to state a claim under section
2 1983.

3 These Findings and Recommendations will be submitted to the United States District Judge
4 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30)**
5 **days** after being served with these Findings and Recommendations, Plaintiff may file written
6 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
7 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
8 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d
9 1153 (9th Cir. 1991).

10
11 IT IS SO ORDERED.

12 **Dated:** April 6, 2009

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE