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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THON NGOT SANG,

1:07-CV-01759-OWW-DLB PC

Plaintiff,

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF
ACTION FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF MAY BE
GRANTED

v.

A. K. SCRIBNER, et al.,

Defendants.

(DOC. 46)

OBJECTIONS DUE WITHIN 30 DAYS

Findings And Recommendations

I. Background

A. Procedural History

Plaintiff Thon Ngot Sang (“Plaintiff”) was a prisoner in the custody of the California Department of Corrections and Rehabilitation. Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceed on Plaintiff’s first amended complaint, filed October 24, 2008, against Defendants Scribner, Flores, Torres, and Ybarra for violation of the Eighth Amendment. On May 19, 2009, Defendants filed a motion to dismiss Plaintiff’s first amended complaint for failure to state a claim. On November 24, 2009, the Court dismissed Plaintiff’s first amended complaint, but granted leave for Plaintiff to file a second amended complaint. On December 28, 2009, Plaintiff filed his second amended complaint, which is pending before the Court for screening.

B. Screening Requirement

The Court is required to screen complaints brought by prisoners seeking relief against a

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

9 A complaint must contain “a short and plain statement of the claim showing that the
10 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
11 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
12 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing
13 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual
14 matter, accepted as true, to ‘state a claim that is plausible on its face.’” *Id.* (quoting *Twombly*,
15 550 U.S. at 555). While factual allegations are accepted as true, legal conclusions are not. *Id.*

16 **II. Summary of Second Amended Complaint**

17 Plaintiff was previously incarcerated at California Substance Abuse Treatment Facility
18 (“SATF”) in Corcoran, California, where the events giving rise to this action occurred. Plaintiff
19 names as Defendants: correctional officers R. Flores and J. Torres, lieutenant O. A. Ybarra, and
20 warden A. K. Scribner.

21 Plaintiff alleges the following. On December 8, 2005, Plaintiff was suffering a severe
22 bout of depression which brought on mental distress and claustrophobic anxiety. Plaintiff
23 approached housing officers Defendants Torres and Flores to notify them of Plaintiff’s
24 psychological state. Plaintiff is a prison mental health recipient. Due to Plaintiff’s prior suicide
25 attempts and self-inflicted harm Plaintiff informed Defendants Torres and Flores that he need to
26 be placed on single cell status or Administrative Segregation (“ad seg”) until seen by a mental
27 health care provider.

28 Defendant Torres found this reasoning insufficient. Plaintiff then stated that he felt

1 overwhelmingly stressed because of claustrophobia from overcrowding, and due to inability to
2 conform to certain political/ethnic rules which Plaintiff found unnecessary. Defendant Torres
3 expressed disbelief that Plaintiff as an Asian American had prison politics concerns. Defendant
4 Torres asked Plaintiff repeatedly if he had any enemy concerns, to which Plaintiff responded no.
5 Plaintiff was issued a CDC 114-D/lock up order which indicated that Plaintiff had enemy
6 concerns.

7 Defendant Lieutenant Ybarra then saw Plaintiff. Plaintiff denied having enemy concerns.
8 Defendant Ybarra expressed disbelief that Plaintiff had any prison politics concerns. Plaintiff
9 was placed in ad seg based on this false report. On December 14, 2005, Plaintiff was seen by the
10 weekly Classification Review Committee, and then re-housed back into the general population.
11 Plaintiff later discovered that the lock-up report had been typed by Asian inmate clerks.

12 On January 7, 2006, Plaintiff was brutally assaulted by two Asian inmates and suffered a
13 severe jaw fracture from a responding officer's baton blow. Plaintiff was then placed back into
14 ad seg for being the victim of an assault. Plaintiff alleges that Defendants acted with deliberate
15 disregard of Plaintiff's mental and psychological need for treatment by setting into play events
16 that led to the assault on Plaintiff.

17 Plaintiff seeks as relief compensatory and punitive damages.

18 **III. Analysis**

19 **A. Deliberate Indifference - Mental Health**

20 Plaintiff contends that Defendants Ybarra and Scribner had a duty to provide Plaintiff
21 with appropriate mental health treatment, and their failure to do so violated his Eighth
22 Amendment rights.¹

23 The Eighth Amendment protects prisoners from inhumane methods of punishment and
24 from inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir.
25 2006). Extreme deprivations are required to make out a conditions of confinement claim, and
26 only those deprivations denying the minimal civilized measure of life's necessities are

27
28 ¹ Plaintiff's Fourteenth Amendment claim is disregarded, as the Eighth Amendment provides the explicit
textual source for Plaintiff's rights. *Patel v. Penman*, 103 F.3d 868, 874 (9th Cir. 1996).

1 sufficiently grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*,
2 503 U.S. 1, 9 (1992) (citations and quotations omitted). In order to state a claim for violation of
3 the Eighth Amendment, Plaintiff must allege facts sufficient to support a claim that officials
4 knew of and disregarded a substantial risk of serious harm to him. *E.g., Farmer v. Brennan*, 511
5 U.S. 825, 837 (1994); *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998). Mere negligence on
6 the part of the official is not sufficient to establish liability, but rather, the official’s conduct must
7 have been wanton. *Farmer*, 511 U.S. at 835; *Frost*, 152 F.3d at 1128.

8 Plaintiff fails to allege sufficient facts to state a cognizable Eighth Amendment claim. It
9 appears that Plaintiff alleges Defendants Ybarra and Scribner had a duty as supervisory
10 defendants to provide Plaintiff with medical care. Under § 1983, liability may not be imposed on
11 supervisory personnel for the actions of their employees under a theory of *respondeat superior*.
12 When the named defendant holds a supervisory position, the causal link between the defendant
13 and the claimed constitutional violation must be specifically alleged. *See Fayle v. Stapley*, 607
14 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978). To state a
15 claim for relief under § 1983 for supervisory liability, plaintiff must allege some facts indicating
16 that the defendant either: personally participated in the alleged deprivation of constitutional
17 rights; knew of the violations and failed to act to prevent them; or promulgated or “implemented
18 a policy so deficient that the policy ‘itself is a repudiation of constitutional rights’ and is ‘the
19 moving force of the constitutional violation.’” *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir.
20 1989) (internal citations omitted); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff
21 alleges no facts that indicate supervisory liability by Defendants Ybarra and Scribner, and thus
22 fails to state a cognizable Eighth Amendment claim for denial of mental health care.²

23 **B. Deliberate Indifference - Failure To Protect**

24 Plaintiff alleges Defendants Torres, Flores, Ybarra, and Scribner failed to protect Plaintiff
25 from harm. Plaintiff contends that Defendant Torres and Flores falsified the CDC 114-D
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27 ² Plaintiff likewise fails to state a claim for supervisory liability against Defendants Scribner and Ybarra for
28 failure to train, supervise, or discipline. Plaintiff alleges no facts indicating anything other than liability based on a
respondeat superior theory, which is not a cognizable claim under § 1983.

1 document which stated that Plaintiff had enemy concerns. Plaintiff contends this caused Plaintiff
2 to be branded a snitch and subsequently attacked. As stated previously, in order to state a claim
3 for violation of the Eighth Amendment, Plaintiff must allege facts sufficient to support a claim
4 that officials knew of and disregarded a substantial risk of serious harm to him. *Farmer*, 511
5 U.S. at 837. Here, Plaintiff alleges that Defendants should have known that placing Plaintiff in
6 ad seg for enemy concerns would have resulted in Plaintiff being labeled a snitch and thus being
7 attacked. The undersigned finds this reasoning far too tenuous to state a cognizable Eighth
8 Amendment claim. Plaintiff's allegations are insufficient to demonstrate that Defendants knew
9 of and disregarded a risk to Plaintiff when they classified Plaintiff, erroneously, as having enemy
10 concerns.

11 Plaintiff's claims against Defendants Scribner and Ybarra for supervisory liability also
12 fail. Plaintiff fails to plead any facts that indicate Defendants Scribner and Ybarra personally
13 participated in the alleged deprivation of constitutional rights; knew of the violations and failed
14 to act to prevent them; or promulgated or "implemented a policy so deficient that the policy
15 'itself is a repudiation of constitutional rights' and is 'the moving force of the constitutional
16 violation.'" *Hansen*, 885 F.2d at 646; *Taylor*, 880 F.2d at 1045.

17 **IV. Conclusion And Recommendation**

18 Plaintiff fails to state any claims against any Defendants under 42 U.S.C. § 1983.
19 Plaintiff was provided with the opportunity to file an amended complaint to cure the deficiencies
20 identified herein, but failed to do so. The undersigned recommends further leave to amend
21 should not be granted. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). Based on the
22 foregoing, it is HEREBY RECOMMENDED that this action be DISMISSED in its entirety for
23 failure to state a claim upon which relief may be granted.

24 These Findings and Recommendations will be submitted to the United States District
25 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty**
26 **(30) days** after being served with these Findings and Recommendations, the parties may file
27 written objections with the court. The document should be captioned "Objections to Magistrate
28 Judge's Findings and Recommendations." The parties are advised that failure to file objections

1 within the specified time may waive the right to appeal the District Court's order. *Martinez v.*
2 *Ylst*, 951 F.2d 1153 (9th Cir. 1991).

3 IT IS SO ORDERED.

4 **Dated: September 1, 2010**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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