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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CARLOS HERRERA,

Plaintiff,

v.

C. HALL, et al.,

Defendants.

CASE NO. 1:08-cv-01882-LJO-SKO PC

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DENIAL OF
DEFENDANTS' MOTIONS TO DISMISS

(Docs. 17, 25, 28)

OBJECTIONS DUE WITHIN 30 DAYS

Plaintiff Carlos Herrera ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Before the Court are three motions to dismiss from Defendants. On October 23, 2009, Defendant Grannis filed a motion to dismiss. (Doc. #17.) On November 9, 2009, Defendants Hall and Zamora filed a motion to dismiss. (Doc. #25.) On November 16, 2009, Defendant Moonga filed a motion to dismiss. (Doc. #28.) Plaintiff has filed oppositions to all three motions to dismiss. (Docs. #30, 36, 39.) Defendants Grannis, Hall, Zamora, and Moonga (collectively referred to as "Defendants" in this order) have filed replies to Plaintiff's oppositions. (Docs. #34, 38, 40.) All three motions to dismiss argue that Plaintiff fails to state a claim against Defendants for their role in responding to Plaintiff's administrative appeals. The issues raised in all three motions to dismiss are identical. Therefore, the Court will address all three motions simultaneously.

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1 **I. Background**

2 **A. Plaintiff's Complaint**

3 This action proceeds on Plaintiff's First Amended Complaint filed on June 19, 2009. (Doc.
4 #10.) Plaintiff is suing Defendants under Section 1983 for the violation of Plaintiff's Eighth
5 Amendment rights. Plaintiff names N. Dill, Sherry Lopez, C. Hall, N. Grannis, Turella, Penner, S.
6 Zamora, G. Moonga, and L. Bluford as Defendants.¹

7 Plaintiff claims that Defendants were deliberately indifferent toward his serious medical
8 needs and that Defendants denied him treatment for his Hepatitis C. The denial of treatment was
9 initially based on reports in Plaintiff's medical file that rendered him ineligible for treatment due to
10 a history of drug abuse and mental illness. Plaintiff alleges that he informed Defendants that these
11 reports were false and requested that Defendants provide treatment. However, Defendants continued
12 to deny Plaintiff's requests for treatment. Plaintiff claims that he suffered severe injury as a result
13 of Defendants' decisions to deny him treatment.

14 Plaintiff claims that he requested Hepatitis treatment from Defendants Turella, Penner, and
15 Lopez, each alleged to be physicians. Plaintiff filed an administrative appeal requesting Hepatitis
16 treatment that explained that his treatment requests were being denied because of false reports in
17 Plaintiff's medical file. Plaintiff's administrative appeal was denied by Defendants Bluford, Dill,
18 Hall, Grannis, Moonga, and Zamora. Plaintiff alleges that Bluford, Dill, Hall, Grannis, Moonga, and
19 Zamora were all aware that the reports in Plaintiff's medical file were false, yet denied Plaintiff's
20 requests for treatment based on information in the false reports.

21 **B. Defendants' Motion to Dismiss**

22 In their motions to dismiss, Defendants argue that they are entitled to dismissal under Federal
23 Rule of Civil Procedure 12(b)(6) because Plaintiff has failed to allege facts sufficient to state a claim
24 for an Eighth Amendment violation. Defendants argue that Plaintiff cannot state a claim for relief
25

26 ¹Defendants Lopez, Turella, and Penner have filed answers to Plaintiff's complaint but have not joined the
27 motions to dismiss currently before the Court. Defendants Dill and Bluford have not made an appearance in this
28 action. The Court received unexecuted summonses as to Dill and Bluford on October 23, 2009 that indicated that
the U.S. Marshal was unable to effect service of process on Dill and Bluford using the information provided by
Plaintiff.

1 based on Defendants' actions in processing Plaintiff's administrative appeals. Defendants contend
2 that "[a] claim for relief based on the failure to grant administrative grievances or process them
3 properly is not a cognizable claim because there is no constitutional guarantee to a prison
4 administrative grievance or appeal system." (Mem. of P. & A. in Supp. of Grannis' Mot. to Dismiss
5 3:15-19; Mem. of P. & A. in Supp. of Zamora and Hall's Mot. to Dismiss 3:15-18; Mem. of P. &
6 A. in Supp. of Moonga's Mot. to Dismiss 3:8-11.) Defendants argue that ruling against a prisoner
7 on an administrative complaint does not cause or contribute to a constitutional violation and that
8 prison officials whose participation in an alleged constitutional violation is limited to the
9 consideration of a prisoner's administrative complaint cannot be held liable for that violation under
10 Section 1983.

11 Plaintiff argues that he is not challenging the constitutionality of the inmate administrative
12 grievance process, and is instead challenging Defendants' role in denying Plaintiff's medical care
13 when Plaintiff had a serious need for medical care. Plaintiff claims that Defendants had the authority
14 to grant Plaintiff's request for treatment and there was no legitimate reason to deny Plaintiff's request
15 for treatment. Plaintiff claims that Defendants knew that the reports in Plaintiff's medical file were
16 false, yet denied Plaintiff's requests for treatment based on the information in the false reports.
17 Plaintiff further argues that Defendants were aware of Plaintiff's need for treatment and were aware
18 of the excessive risk posed by denying treatment. Plaintiff argues that the denial thus constituted
19 deliberate indifference.

20 **II. Discussion**

21 **A. Federal Rule of Civil Procedure 12(b)(6)**

22 Defendants contend that they are entitled to dismissal under Federal Rule of Civil Procedure
23 12(b)(6) because Plaintiff's first amended complaint fails to state a claim. To survive a motion to
24 dismiss for failure to state a claim, a complaint must meet the pleading standard set by Federal Rule
25 of Civil Procedure 8. Under Rule 8(a), a complaint must contain "a short and plain statement of the
26 claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "[T]he pleading
27 standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than
28 an unadorned, the-defendant-unlawfully-harmed-me accusation." Ashcroft v. Iqbal, 129 S. Ct. 1937,

1 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). “[A] complaint
2 must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on
3 its face.’” Id. (quoting Twombly, 550 U.S. at 570). “[A] complaint [that] pleads facts that are
4 ‘merely consistent with’ a defendant’s liability . . . ‘stops short of the line between possibility and
5 plausibility of entitlement to relief.’” Id. (quoting Twombly, 550 U.S. at 557). Further, although a
6 court must accept as true all factual allegations contained in a complaint, a court need not accept a
7 plaintiff’s legal conclusions as true. Id. “Threadbare recitals of the elements of a cause of action,
8 supported by mere conclusory statements, do not suffice.” Id. (quoting Twombly, 550 U.S. at 555).

9 **B. Eighth Amendment Claims Against Appeals Reviewers**

10 Plaintiff claims that Defendants violated Plaintiff’s Eighth Amendment rights. The Eighth
11 Amendment prohibits the imposition of cruel and unusual punishments and “embodies ‘broad and
12 idealistic concepts of dignity, civilized standards, humanity and decency.’” Estelle v. Gamble, 429
13 U.S. 97, 102 (1976) (quoting Jackson v. Bishop, 404 F.2d 571, 579 (8th Cir. 1968)). A prison
14 official violates the Eighth Amendment only when two requirements are met: (1) the objective
15 requirement that the deprivation is “sufficiently serious,” and (2) the subjective requirement that the
16 prison official has a “sufficiently culpable state of mind.” Farmer v. Brennan, 511 U.S. 825, 834
17 (1994) (quoting Wilson v. Seiter, 501 U.S. 294, 298 (1991)).

18 The objective requirement that the deprivation be “sufficiently serious” is met where the
19 prison official’s act or omission results in the denial of “the minimal civilized measure of life’s
20 necessities.” Id. (quoting Rhodes v. Chapman, 452 U.S. 337, 347 (1981)). The subjective
21 requirement that the prison official has a “sufficiently culpable state of mind” is met where the prison
22 official acts with “deliberate indifference” to inmate health or safety. Id. (quoting Wilson, 501 U.S.
23 at 302-303). A prison official acts with deliberate indifference when he or she “knows of and
24 disregards an excessive risk to inmate health or safety.” Id. at 837. “[T]he official must both be
25 aware of facts from which the inference could be drawn that a substantial risk of serious harm exists,
26 and he must also draw the inference.” Id.

27 “[D]eliberate indifference to a prisoner’s serious illness or injury states a cause of action
28 under § 1983.” Estelle, 429 U.S. at 105. In order to state an Eighth Amendment claim based on

1 deficient medical treatment, a plaintiff must show: (1) a serious medical need; and (2) a deliberately
2 indifferent response by the defendant. Conn v. City of Reno, 572 F.3d 1047, 1055 (9th Cir. 2009)
3 (quoting Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)). A serious medical need is shown by
4 alleging that the failure to treat the plaintiff's condition could result in further significant injury, or
5 the unnecessary and wanton infliction of pain. Id. A deliberately indifferent response by the
6 defendant is shown by a purposeful act or failure to respond to a prisoner's pain or possible medical
7 need and harm caused by the indifference. Id. In order to constitute deliberate indifference, there
8 must be an objective risk of harm and the defendant must have subjective awareness of that harm.
9 Id.

10 Plaintiff's complaint alleges that he had a serious medical need. Plaintiff claims that the
11 failure to provide Hepatitis treatment caused him severe injury, and that the response from
12 Defendants was deliberately indifferent. Plaintiff alleges that Defendants knew that Plaintiff had a
13 serious need, knew that Plaintiff needed treatment for his serious medical need, knew that the reports
14 in his medical file were false, yet denied Plaintiff's requests for treatment by relying on the
15 information in his medical file that was known to be false. Plaintiff has alleged sufficient facts to
16 support the plausible conclusion that Defendants were aware that their actions in denying Plaintiff's
17 administrative appeal exposed Plaintiff to an excessive risk. Plaintiff has alleged that Defendants
18 were deliberately indifferent.

19 Defendants argue that there can be no claim for relief based on the failure to grant an
20 administrative grievance because prisoners have no constitutional right to a prison administrative
21 grievance system. Defendants' argument is not supported by law. Defendants rely on two Ninth
22 Circuit cases in support of their proposition that the processing of administrative grievances cannot
23 form the basis of a claim for relief under Section 1983.

24 In Mann v. Adams, 855 F.2d 639 (9th Cir. 1988), the Ninth Circuit held that a state's
25 unpublished policy statements establishing a grievance procedure did not create a constitutionally
26 protected liberty interest. The Ninth Circuit did not discuss Mann's claim in the context of any
27 specific constitutional right, but state-created liberty interests are an element of Fourteenth

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1 Amendment due process claims. See Sandin v. Conner, 515 U.S. 472, 484 (1995) (“States may
2 under certain circumstances create liberty interests which are protected by the Due Process Clause.”)

3 In Ramirez v. Galaza, 334 F.3d 850 (9th Cir. 2003), the Ninth Circuit held that “inmates lack
4 a separate constitutional entitlement to a specific prison grievance procedure.” Id. at 860 (citing
5 Mann, 855 F.2d at 640). The Ninth Circuit applied that proposition to reject “Ramirez’s claimed
6 loss of a liberty interest in the processing of his appeals.” Id.

7 Taken together, Mann and Ramirez cannot be read broadly enough to support the proposition
8 that the processing of an administrative appeal cannot, under any circumstances, form the basis of
9 a claim to relief under Section 1983. Mann and Ramirez simply held that a Plaintiff has no
10 substantive right to a prison grievance system and that due process claims based on the denial of or
11 interference with a prisoner’s access to a prison grievance system are not cognizable. Thus, if a
12 prisoner were to raise a claim premised on an asserted denial of due process caused by denied or
13 obstructed access to a prison’s administrative grievance system, the claim would not be cognizable
14 under Mann and Ramirez. However, here, Plaintiff is not claiming a loss of a substantive right in
15 the processing of his appeals caused by denied or obstructed access to a prison grievance system.
16 Plaintiff’s claim is based on rights secured by the Eighth Amendment--the right to be free from cruel
17 and unusual punishments. The decisions in Mann and Ramirez do not touch upon whether an
18 appeals reviewer’s actions can be considered “cruel and unusual” within the meaning of the Eighth
19 Amendment.

20 Defendants cite Ham v. Clark, No. 1:08-cv-01982-LJO-SMS PC, 2009 WL 2355265 (E.D.
21 Cal. July 29, 2009), to support their position that a prison official cannot be liable under Section
22 1983 for the processing of an administrative appeal. In Ham, a prisoner attempted to sue prison
23 officials for the failure to provide pain medication which allegedly left Plaintiff in severe pain. Ham
24 v. Clark, No. 1:08-cv-01982-LJO-SMS PC, 2009 WL 2355265, at *1-2 (E.D. Cal. July 29, 2009).
25 The district court dismissed the plaintiff’s claims against the prison officials who denied his
26 administrative appeals on two separate grounds: (1) the plaintiff has no substantive right to a
27 particular grievance procedure, and (2) the plaintiff failed to demonstrate that the appeals reviewers
28 were personally involved with Plaintiff’s medical care or treatment. Id. It appears that plaintiff’s

1 Eighth Amendment claims were dismissed because he did not allege that the appeals reviewers had
2 the authority to grant the plaintiff's request for treatment. Thus, it was unclear whether the plaintiff's
3 administrative appeal was a request for medical treatment or whether the plaintiff was merely
4 complaining about another prison official's failure to provide him with treatment. The distinction
5 is important because an appeals coordinator does not cause or contribute to a completed
6 constitutional violation that occurs in the past. See George v. Smith, 507 F.3d 605, 609-610 (7th Cir.
7 2007) (“[a] guard who stands and watches while another guard beats a prisoner violates the
8 Constitution; a guard who rejects an administrative complaint about a completed act of misconduct
9 does not”). However, if there is an ongoing constitutional violation and the appeals coordinator had
10 the authority and opportunity to prevent the ongoing violation, a plaintiff may be able to establish
11 liability by alleging that the appeals coordinator knew about an impending violation and failed to
12 prevent it. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (supervisory official liable under
13 Section 1983 if he or she knew of a violation and failed to act to prevent it). Plaintiff has done so
14 here.

15 Defendants also cite Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009), for the proposition that “[a]
16 defendant who is involved only to the extent that he or she considered a plaintiff's inmate appeal
17 may not be held liable.” (Def. Grannis' Reply to Pl.'s Opp'n to Her Mot. to Dismiss 2:20-22;
18 Zamora and Hall's Reply to Pl.'s Opp'n to Their Mot. to Dismiss 2:21-23; Reply to Pl.'s Opp'n to
19 Moonga's Mot. to Dismiss 2:19-21.) Iqbal discussed the viability of a detainee's Bivens action
20 against supervisory governmental officials. The Supreme Court held that “Government officials may
21 not be held liable for the unconstitutional conduct of their subordinates under a theory of respondeat
22 superior.” Iqbal, 129 S.Ct at 1948. “Because vicarious liability is inapplicable to Bivens and § 1983
23 suits, a plaintiff must plead that each Government-official defendant, through the official's own
24 individual actions, has violated the Constitution.” Id.

25 Iqbal does not support Defendants' proposition that “a defendant who is involved only to the
26 extent that he or she considered a plaintiff's inmate appeal may not be held liable.” Iqbal does not
27 even discuss the processing of inmate appeals. Further, even if Defendants could be considered
28 supervisors, Plaintiff is not attempting to hold them liable for the unconstitutional conduct of their

1 subordinates. Plaintiff has sufficiently alleged that Defendants' own individual actions in denying
2 Plaintiff's requests for medical treatment violated the Constitution. Plaintiff has alleged sufficient
3 facts to state a claim against Defendants Grannis, Hall, Zamora, and Moonga.

4 **III. Conclusion and Recommendations**

5 The Court finds that Plaintiff's first amended complaint states cognizable claims against
6 Defendants Grannis, Hall, Zamora, and Moonga for deliberate indifference to his serious medical
7 needs in violation of the Eighth Amendment.

8 Accordingly, it is HEREBY RECOMMENDED that Defendants' motions to dismiss, filed
9 on October 23, 2009, November 9, 2009, and November 16, 2009, be DENIED.

10 These Findings and Recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
12 days after being served with these Findings and Recommendations, any party may file written
13 objections with the Court and serve a copy on all parties. Such a document should be captioned
14 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
15 shall be served and filed within ten (10) days after service of the objections. The parties are advised
16 that failure to file objections within the specified time may waive the right to appeal the District
17 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18
19 IT IS SO ORDERED.

20 **Dated: July 13, 2010**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE