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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JESUS C. BRIONES,	CASE NO. 1:08-cv-01987-OWW-SMS PC
Plaintiff,	FINDINGS AND RECOMMENDATIONS
v.	RECOMMENDING DISMISSAL OF ACTION,
ANTHONY HEDGPETH, et al.,	WITH PREJUDICE, FOR FAILURE TO
Defendants.	STATE A CLAIM UNDER SECTION 1983
	(Doc. 10)
	THIRTY-DAY OBJECTION PERIOD

Findings and Recommendations Following Screening of Second Amended Complaint

I. Screening Requirement

Plaintiff Jesus C. Briones, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on December 31, 2008. Pending before the Court is Plaintiff’s second amended complaint, filed November 16, 2009.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 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). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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

10 **II. Discussion**

11 **A. Summary of Second Amended Complaint**

12 Plaintiff’s original and first amended complaints were dismissed, with leave to amend, for
13 failure to state any claims under section 1983. In his second amended complaint, Plaintiff again
14 attempts to state claims for violation of his constitutional rights arising from a race-based lock-down
15 at Kern Valley State Prison. Plaintiff names Warden Anthony Hedgpeth, Associate Warden J. Cust,
16 and Facility Captain G. R. Hudson as defendants, and he seeks damages and an order prohibiting
17 Kern Valley State Prison from imposing race-based lock-downs on inmates.

18 **B. Eighth Amendment Claim**

19 Plaintiff alleges a violation of the Eighth Amendment arising from the denial of outdoor
20 exercise and fresh air during the lock-down. Under section 1983, Plaintiff is required to show that
21 (1) each defendant acted under color of state law and (2) each defendant deprived him of rights
22 secured by the Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185
23 (9th Cir. 2006). Plaintiff is required to set forth sufficient factual allegations demonstrating each
24 defendant’s personal participation in the deprivation of his rights. Jones v. Williams, 297 F.3d 930,
25 934 (9th Cir. 2002). Because there is no respondeat superior liability under section 1983, each
26 defendant is only liable for his or her own misconduct. Iqbal, 129 S.Ct. at 1948-49.

27 The Eighth Amendment protects prisoners from inhumane methods of punishment and from
28 inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006).

1 Extreme deprivations are required to make out a conditions of confinement claim, and only those
2 deprivations denying the minimal civilized measure of life's necessities are sufficiently grave to form
3 the basis of an Eighth Amendment violation. Hudson v. McMillian, 503 U.S. 1, 9, 112 S.Ct. 995
4 (1992) (citations and quotations omitted). In order to state a claim for violation of the Eighth
5 Amendment, the plaintiff must allege facts sufficient to support a claim that prison officials knew
6 of and disregarded a substantial risk of serious harm to the plaintiff. E.g., Farmer v. Brennan, 511
7 U.S. 825, 847, 114 S.Ct. 1970 (1994); Thomas v. Ponder, 611 F.3d 1144, 1151-52 (9th Cir. 2010);
8 Richardson v. Runnels, 594 F.3d 666, 672 (9th Cir. 2010).

9 Plaintiff alleges that black and Hispanic inmates were placed on lock-down, purportedly for
10 engaging in behavior likely to lead to violence. Plaintiff contends that information upon which the
11 lock-down was based was false and that prison officials knew or should have known of its falsity.
12 Plaintiff was on lock-down status for more than eighty-eight days, and he alleges that policies
13 prepared by Defendant Hudson and approved by Defendants Cust and Hedgpeth led to the violation
14 of his rights.

15 Inmates have a constitutional right to outdoor exercise under the Eighth Amendment, and the
16 denial of the opportunity to exercise for approximately eighty-eight days is sufficiently serious to
17 satisfy the objective component of an Eighth Amendment claim. Thomas, 611 F.3d at 1151-52.
18 However, Plaintiff must also make a showing as to the subjective element of his claim and he has
19 not done so. Farmer, 511 U.S. at 847; Thomas, 611 F.3d at 1150-51; Richardson, 594 F.3d at 672.
20 Plaintiff's conclusory allegation that the policy was prepared by Defendant Hudson and approved
21 by Defendants Cust and Hedgpeth falls short of adequately linking them to a decision or policy that
22 was deliberately indifferent to inmates' health. Iqbal, 129 S.Ct. at 1949-50. Plaintiff fails to state
23 a plausible claim against Defendants Hedgpeth, Cust, and Hudson for violation of the Eighth
24 Amendment, and the Court recommends dismissal of the claim. Id.

25 **C. Equal Protection Claim**

26 Plaintiff alleges that he was subject to the lock-down because it affected Hispanic inmates
27 and he is classified as a Southern Hispanic. Plaintiff challenges the lock-down as race based, in
28 violation of his right to equal protection.

1 “The Equal Protection Clause . . . is essentially a direction that all persons similarly situated
2 should be treated alike.” City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439 (1985)
3 (citing Plyler v. Doe, 457 U.S. 202, 216 (1982)). Race-based classifications such as that at issue here
4 are immediately suspect and are subject to strict scrutiny, which requires the government to
5 demonstrate, at the appropriate stage in the litigation, that the classification was narrowly tailored
6 to serve a compelling government interest. Johnson v. California, 543 U.S. 499, 505-09, 125 S.Ct.
7 1141 (2005); Richardson, 594 F.3d at 671.

8 Here, Plaintiff’s equal protection claim suffers from the same deficiency as his Eighth
9 Amendment claim. Plaintiff has not adequately linked the defendants named in this action to the
10 violation complained of. Therefore, Plaintiff fails to state a plausible claim against Defendants
11 Hedgpeth, Cust, and Hudson for violation of the Equal Protection Clause. Iqbal, 129 S.Ct. at 1949-
12 50. The Court recommends dismissal of the claim.

13 **III. Conclusion and Recommendation**

14 Plaintiff’s second amended complaint fails to state any claims upon which relief may be
15 granted under section 1983. Plaintiff was given detailed notice of the deficiencies and an
16 opportunity to amend on two previous occasions. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir.
17 2000); Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). A third attempt to cure the
18 deficiencies is neither required nor warranted.

19 Accordingly, it is HEREBY RECOMMENDED that this action be dismissed, with prejudice,
20 for failure to state any claims under section 1983.

21 These Findings and Recommendations will be submitted to the United States District Judge
22 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30)**
23 **days** after being served with these Findings and Recommendations, Plaintiff may file written
24 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
25 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the

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

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IT IS SO ORDERED.

Dated: January 13, 2011

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE