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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

PATRICK KUNKEL,

Plaintiff,

v.

N. DILL, et al.,

Defendants.

CASE NO. 1:09-cv-00686-LJO-SKO PC

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING THAT DEFENDANT’S  
MOTION TO DISMISS BE DENIED

(Doc. 20)

OBJECTIONS DUE WITHIN 30 DAYS

Plaintiff Patrick Kunkel (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On March 22, 2010, Defendant Pfeiffer filed a motion to dismiss on the ground that Plaintiff fails to state a claim against Pfeiffer. (Doc. #20.) Plaintiff filed an opposition to Defendant’s motion to dismiss on May 18, 2010. (Doc. #38.) For the reasons set forth below, the Court recommends that Defendant’s motion to dismiss be denied.

**I. Background**

**A. Plaintiff’s Claim Against Defendant Pfeiffer**

This action proceeds on Plaintiff’s first amended complaint, filed on October 8, 2009. (Doc. #8.) Plaintiff’s first amended complaint stated claims against Defendants Garcia, Mendoza, Araich, Mackey, Robaina, Dileo, Dill, Pfeiffer, Ali, and Zamora for the violation of Plaintiff’s rights under the Eighth Amendment. Plaintiff’s Eighth Amendment claim is based on Defendants’ failure to provide Plaintiff with adequate dental treatment for a broken tooth and failure to provide adequate medical treatment for his ankle and knee injuries.

1 Plaintiff alleges that Defendant Pfeiffer is an appeals coordinator. Plaintiff alleged that  
2 Pfeiffer became aware of Plaintiff's need for medical and dental treatment after Plaintiff filed  
3 numerous appeals processed by Pfeiffer. Plaintiff further alleged that Pfeiffer ignored Plaintiff's  
4 medical needs by denying or "screening out" Plaintiff's appeals.

5 **B. Defendant Pfeiffer's Motion to Dismiss**

6 Defendant argues that Plaintiff fails to state a claim against Defendant Pfeiffer because  
7 "[t]here is no allegation that PFEIFFER was personally involved in the plaintiff's medical care or  
8 treatment plan and he is not alleged to belong to the medical staff." (Pfeiffer's Mem. of P. & A. in  
9 Supp. of His Mot. to Dismiss 4:9-11, ECF No. 20.) Pfeiffer alleges that Plaintiff only alleged that  
10 Pfeiffer considered Plaintiff's inmate appeals. Pfeiffer contends that Plaintiff cannot state a claim  
11 against Pfeiffer for failing to grant an administrative grievance.

12 **C. Plaintiff's Opposition to Defendant's Motion to Dismiss**

13 Plaintiff argues that anybody who knows about a violation of the Constitution and fails to  
14 cure the violation is liable for the constitutional violation by failing to intervene. Plaintiff contends  
15 he filed at least 40 medical requests that did not receive a response over a five-month period of time.  
16 Plaintiff argues that Pfeiffer is liable for being aware that Plaintiff's constitutional rights were being  
17 violated and failing to intervene.

18 **II. Discussion**

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

20 Defendant contends that he is entitled to dismissal under Federal Rule of Civil Procedure  
21 12(b)(6) because Plaintiff's first amended complaint fails to state a claim against him. To survive  
22 a motion to dismiss for failure to state a claim, a complaint must meet the pleading standard set by  
23 Federal Rule of Civil Procedure 8. Under Rule 8(a), a complaint must contain "a short and plain  
24 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "[T]he  
25 pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands  
26 more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Ashcroft v. Iqbal, 129  
27 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). "[A]  
28 complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is

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

7 **B. Eighth Amendment Claim Against Defendant Pfeiffer**

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

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

26 “[D]eliberate indifference to a prisoner’s serious illness or injury states a cause of action  
27 under § 1983.” Estelle, 429 U.S. at 105. In order to state an Eighth Amendment claim based on  
28 deficient medical treatment, a plaintiff must show: (1) a serious medical need; and (2) a deliberately

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

9 Plaintiff's complaint alleges that he had a serious medical need. Plaintiff claims he suffered  
10 severe pain because he was not given treatment for his broken tooth or for his ankle/knee injury.  
11 Plaintiff also alleges that the response from Defendant Pfeiffer was deliberately indifferent. Plaintiff  
12 alleges that Pfeiffer knew that Plaintiff had a serious medical need and knew that Plaintiff needed  
13 treatment for his serious medical need, yet denied or screened out Plaintiff's requests for treatment.  
14 Plaintiff has alleged sufficient facts to support the plausible conclusion that Pfeiffer was aware that  
15 his actions in denying Plaintiff's administrative appeal exposed Plaintiff to an excessive risk.  
16 Plaintiff has alleged that Defendant Pfeiffer was deliberately indifferent.

17 Defendant argues that there can be no claim for relief based on the failure to grant an  
18 administrative grievance because prisoners have no constitutional right to a prison administrative  
19 grievance system. Defendant's argument is not supported by law.

20 Defendant relies on two Ninth Circuit cases in support of the proposition that the processing  
21 of administrative grievances cannot form the basis of a claim for relief under Section 1983. In  
22 Mann v. Adams, 855 F.2d 639 (9th Cir. 1988), the Ninth Circuit held that a state's unpublished  
23 policy statements establishing a grievance procedure did not create a constitutionally protected  
24 liberty interest. The Ninth Circuit did not discuss Mann's claim in the context of any specific  
25 constitutional right, but state-created liberty interests are an element of Fourteenth Amendment due  
26 process claims. See Sandin v. Conner, 515 U.S. 472, 484 (1995) ("States may under certain  
27 circumstances create liberty interests which are protected by the Due Process Clause."). In Ramirez  
28 v. Galaza, 334 F.3d 850 (9th Cir. 2003), the Ninth Circuit held that "inmates lack a separate

1 constitutional entitlement to a specific prison grievance procedure.” Id. at 860 (citing Mann, 855  
2 F.2d at 640). The Ninth Circuit applied that proposition to reject “Ramirez’s claimed loss of a  
3 liberty interest in the processing of his appeals.” Id.

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

17 Defendant also cites Ham v. Clark, No. 1:08-cv-01982-LJO-SMS PC, 2009 WL 2355265  
18 (E.D. Cal. July 29, 2009), to support their position that a prison official cannot be liable under  
19 Section 1983 for the processing of an administrative appeal. In Ham, a prisoner attempted to sue  
20 prison officials for the failure to provide pain medication which allegedly left Plaintiff in severe pain.  
21 Ham v. Clark, No. 1:08-cv-01982-LJO-SMS PC, 2009 WL 2355265, at \*1-2 (E.D. Cal. July 29,  
22 2009). The Court dismissed the plaintiff’s claims against the prison officials who denied his  
23 administrative appeals on two separate grounds (1) because the plaintiff has no substantive right to  
24 a particular grievance procedure, and (2) because the plaintiff failed to demonstrate that the appeals  
25 reviewers were personally involved with Plaintiff’s medical care or treatment. Id. The plaintiff’s  
26 Eighth Amendment claims were dismissed because it appears that the plaintiff did not allege that the  
27 appeals reviewers had the authority to grant the plaintiff’s request for treatment. Thus, it was unclear  
28 whether the plaintiff’s administrative appeal was requesting treatment or whether the plaintiff was

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

### 13 **III. Conclusion and Recommendation**

14 The Court finds that Plaintiff’s first amended complaint states a cognizable claim against  
15 Defendant Pfeiffer under Section 1983 for the violation of Plaintiff’s rights secured by the Eighth  
16 Amendment. Plaintiff has sufficiently alleged that he suffered severe pain because prison officials  
17 failed to provide Plaintiff with dental treatment and medical treatment. Plaintiff further alleged that  
18 Pfeiffer was aware of Plaintiff’s need for treatment and acted with deliberate indifference by denying  
19 Plaintiff’s requests for treatment.

20 Accordingly, it is HEREBY RECOMMENDED that Defendant’s motion to dismiss, filed  
21 on March 22, 2010, be DENIED.

22 These Findings and Recommendations are submitted to the United States District Judge  
23 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)  
24 days after being served with these Findings and Recommendations, any party may file written  
25 objections with the Court and serve a copy on all parties. Such a document should be captioned  
26 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
27 shall be served and filed within ten (10) days after service of the objections. The parties are advised  
28 that failure to file objections within the specified time may waive the right to appeal the District

1 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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3 IT IS SO ORDERED.

4 **Dated:** July 28, 2010

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

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