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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GERALD A. WEST,	CASE NO. 1:09-cv-01277-LJO-GBC PC
Plaintiff,	FINDINGS AND RECOMMENDATIONS
v.	RECOMMENDING DISMISSING CERTAIN
	CLAIMS
FEDERAL BUREAU OF PRISONS, et al.,	(Doc. 25)
Defendants.	OBJECTIONS DUE WITHIN THIRTY DAYS

I. Screening Requirement

Plaintiff Gerald A. West (“Plaintiff”) is a federal prisoner proceeding pro se and in forma pauperis in this civil action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), which provides a remedy for violation of civil rights by federal actors. The Magistrate Judge screened the second amended complaint and issued findings and recommendations on April 16, 2010, recommending the action proceed against Defendant Doe 2 and be dismissed as to Defendants Doe 1 and Doe 2. (Doc. 19.) Plaintiff filed an objection on July 6, 2010, and the Court granted leave to file a third amended complaint. (Docs. 23, 24.) Currently pending before the Court is the third amended complaint, filed August 27, 2010. (Doc. 25.)

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 “fails to state a claim on which relief may be granted,” or that “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C § 1915(e)(2)(B).

1 In determining whether a complaint states a claim, the Court looks to the pleading standard
2 under Federal Rule of Civil Procedure 8(a). Under Rule 8(a), a complaint must contain “a short and
3 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).
4 “[T]he pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it
5 demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” Ashcroft v.
6 Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 555
7 (2007)).

8 Under section 1983, Plaintiff must demonstrate that each defendant personally participated
9 in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). This requires
10 the presentation of factual allegations sufficient to state a plausible claim for relief. Iqbal, 129 S. Ct.
11 at 1949-50; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).

12 **II. Complaint Allegations**

13 Plaintiff is currently incarcerated at the United States Penitentiary in Lewisburg,
14 Pennsylvania. On October 26, 2007, Plaintiff was transferred to the United States Penitentiary in
15 Atwater, California. Upon arrival he was interviewed by an unnamed captain (“Defendant Doe 1”)
16 to determine if he was suitable for placement in the general population. Plaintiff told Defendant Doe
17 1 that there had been an incident at his prior prison and an inmate who had traveled with him was
18 going to deliver a message to gang members to have him killed. Defendant Doe 1 told Plaintiff not
19 to worry about it and not to cross racial lines. Plaintiff was placed in the general population. (Doc.
20 25, p. 2.)

21 The following morning, inmate Morton was attacked and stabbed by gang members. As
22 inmate Morton was being escorted to the infirmary he told an unnamed correctional officer
23 (“Defendant Doe 2”) that he was not the intended target of the attack, but knew who was. Defendant
24 Doe 2 responded that it was the end of his shift and he was going home. The unit was locked down
25 due to the stabbing, however Plaintiff alleges that nothing was done to investigate who had
26 committed the assault or to find the weapon used. (Id.)

27 Two hours after the assault, an unknown correctional officer (“Defendant Doe 3”), knowing
28 there was a weapon in the unit, gave the order to reopen the unit. Plaintiff was stabbed by gang

1 members with prison made weapons. (Id.) Plaintiff brings suit against Defendants Doe 1, Doe 2,
2 and Doe 3 in their individual and official capacities. He is seeking punitive damages in the amount
3 of \$500,000. (Id.)

4 **III. Discussion**

5 Although prison conditions may be restrictive and harsh, prison officials must provide
6 prisoners with food, clothing, shelter, sanitation, medical care, and personal safety. Farmer v.
7 Brennan, 511 U.S. 825, 832-33 (1994) (internal citations and quotations omitted). Prison officials
8 are required “to take reasonable steps to protect inmates from physical abuse.” Hoptowit v. Ray, 682
9 F.2d 1237, 1250 (9th Cir. 1982) (abrogated on other grounds by Sandin v. O’Connor, 515 U.S. 472
10 (1995)).

11 To establish a violation of this duty, the inmate must show that prison officials were
12 deliberately indifferent to a substantial risk of serious harm to the inmate’s safety. Farmer, 511 U.S.
13 at 834. Deliberate indifference requires a showing that “prison officials were aware of a “substantial
14 risk of serious harm” to an inmates health or safety and that there was no “reasonable justification
15 for the deprivation, in spite of that risk.” Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010)
16 (quoting Farmer, 511 U.S. at 837, 844). Officials may be aware of the risk because it is obvious.
17 Thomas, 611 F.3d at 1152. Plaintiff has stated a cognizable claim against Defendants Doe One, Doe
18 Two, and Doe Three for failure to protect in violation of the Eighth Amendment.¹

19 However, Plaintiff may not bring suit against Defendants in their official capacities. “The
20 Eleventh Amendment bars suits for money damages in federal court against a state, its agencies, and
21 state officials acting in their official capacities.” Aholelei v. Dept. of Public Safety, 488 F.3d 1144,
22 1147 (9th Cir. 2007). Therefore the Court will recommend that the claim against Defendants in their
23 official capacities be dismissed.

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26 ¹While the complaint states a claim for relief for a violation of the Eighth Amendment, Plaintiff does not
27 identify the Doe Defendants. Because Plaintiff is proceeding in forma pauperis, the Court must appoint the United
28 States Marshal to serve each defendant with a summons and complaint. Fed. R. Civ. Pro. 4(c)(2). However, the
Marshal cannot locate and serve unidentified defendants. Plaintiff will need to provide information sufficient to
identify Doe Defendants.

1 **IV. Conclusion and Recommendation**

2 Accordingly, it is HEREBY RECOMMENDED that:

- 3 1. This action proceed on the third amended complaint, filed August 27, 2010, against
4 Defendants Doe 1, Doe 2, and Doe 3, in their individual capacities, for failure to
5 protect in violation of the Eighth Amendment; and
6 2. Plaintiff's claim against Defendants Doe 1, Doe 2, and Doe 3 in their official
7 capacities be dismissed for failure to state a claim.

8 These findings and recommendations will be submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
10 days after being served with these findings and recommendations, Plaintiff may file written
11 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
12 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
13 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
14 1153 (9th Cir. 1991).

15 IT IS SO ORDERED.

16 Dated: December 30, 2010

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18 UNITED STATES MAGISTRATE JUDGE