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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

WESLEY KANE CAMPBELL,		CASE NO. 1:10-cv-02137-OWW-GBC (PC)
Plaintiff,		FINDINGS AND RECOMMENDATION
v.		RECOMMENDING DISMISSAL WITH
DIRECTOR OF HEALTH CARE, et al.,		PREJUDICE OF PLAINTIFF'S FIRST
Defendants.		AMENDED COMPLAINT FOR FAILURE TO
		STATE A CLAIM
		(ECF No. 8)
		/ OBJECTIONS DUE WITHIN THIRTY DAYS

**I. PROCEDURAL HISTORY**

Plaintiff Wesley Kane Campbell ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On November 16, 2010, Plaintiff filed a complaint in 1:10-cv-02137-OWW-GBC. (ECF No. 1.) On November 29, 2010, Plaintiff filed a complaint in 1:10-cv-02200-SMS. These cases were consolidated and 1:10-cv-02200-SMS was closed. (ECF No. 7.) On December 14, 2010, Plaintiff's original complaints were dismissed for failure to state a claim. Plaintiff filed his First Amended Complaint on January 3, 2011. (ECF No. 8.)

This First Amended Complaint is now before the Court for screening. For the reasons set forth below, the Court finds that Plaintiff has failed to state any claim upon which relief may be granted.

**II. SCREENING REQUIREMENTS**

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

1 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
2 § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has  
3 raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which  
4 relief may be granted, or that seek monetary relief from a defendant who is immune from  
5 such relief. 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee, or any portion  
6 thereof, that may have been paid, the court shall dismiss the case at any time if the court  
7 determines that . . . the action or appeal . . . fails to state a claim upon which relief may be  
8 granted.” 28 U.S.C. § 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  
11 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by  
12 mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949  
13 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set  
14 forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its  
15 face.’” Iqbal, 129 S.Ct. at 1949 (quoting Twombly, 550 U.S. at 555). While factual  
16 allegations are accepted as true, legal conclusions are not. Iqbal, 129 S.Ct. at 1949.

17 **III. SUMMARY OF COMPLAINT**

18 Plaintiff alleges violations of his Eighth and Fourteenth Amendment rights. Plaintiff  
19 names the following individuals as Defendants: Arnold Schwarzenegger, Lopez, Matthew  
20 Cate, all medical staff at California State Prison, and five unnamed correctional officers.

21 Plaintiff alleges as follows: Plaintiff states that unnamed correctional officers have  
22 been feeding him feces in his food. He further states that some of the trays could have  
23 HIV on them. Additionally, Defendant Cate has “copied a chrono” that falsely states that  
24 Plaintiff is a sex offender and, designates him as Special Needs Yard.

25 Plaintiff seeks to have the Special Needs Yard designation removed from his record  
26 and monetary damages.

27 **IV. ANALYSIS**

28 The Civil Rights Act under which this action was filed provides:

1 Every person who, under color of [state law] . . . subjects, or  
2 causes to be subjected, any citizen of the United States . . . to  
3 the deprivation of any rights, privileges, or immunities secured  
4 by the Constitution . . . shall be liable to the party injured in an  
5 action at law, suit in equity, or other proper proceeding for  
6 redress.

7 42 U.S.C. § 1983. “Section 1983 . . . creates a cause of action for violations of the federal  
8 Constitution and laws.” Sweaney v. Ada County, Idaho, 119 F.3d 1385, 1391 (9th Cir.  
9 1997) (internal quotations omitted).

10 **A. Eighth Amendment**

11 Plaintiff appears to be alleging that he is being subjected to cruel and unusual  
12 punishment in violation of the Eighth Amendment.

13 The Eighth Amendment’s prohibition of cruel and unusual punishment requires that  
14 prison officials take reasonable measures for the safety of inmates. See Farmer v.  
15 Brennan, 511 U.S. 825, 834 (1994). A prison official violates the Eighth Amendment only  
16 when two requirements are met: (1) the deprivation alleged is, objectively, sufficiently  
17 serious, and (2) the official is, subjectively, deliberately indifferent to the inmate’s safety.

18 See id. “[O]nly those deprivations denying ‘the minimal civilized measure of life’s  
19 necessities,’ are sufficiently grave to form the basis of an Eighth Amendment violation.”  
20 Wilson v. Seiter, 501 U.S. 294, 298 (1991) (internal citation omitted).

21 Deliberate indifference is shown by “a purposeful act or failure to respond to a  
22 prisoner’s pain or possible medical need,” and “harm caused by the indifference.” Jett v.  
23 Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (citing McGuckin v. Smith, 974 F.2d 1050,  
24 1060 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d  
25 1133 (9th Cir. 1997) (en banc)). “Deliberate indifference is a high legal standard.” Toguchi  
26 v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004). “Under this standard, the prison official  
27 must not only ‘be aware of the facts from which the inference could be drawn that a  
28 substantial risk of serious harm exists,’ but that person ‘must also draw the inference.’” Id.  
at 1057 (quoting Farmer, 511 U.S. at 837). “If a [prison official] should have been aware  
of the risk, but was not, then the [official] has not violated the Eighth Amendment, no

1 matter how severe the risk.” Id. (quoting Gibson v. County of Washoe, Nevada, 290 F.3d  
2 1175, 1188 (9th Cir. 2002)).

3 Plaintiff has again failed to attribute responsibility to any named Defendant. Plaintiff  
4 merely states that Defendants are giving him feces in his food and that his tray is infected  
5 with HIV.

6 Plaintiff was previously notified of the relevant legal standards and these same  
7 deficiencies in his prior complaint. The Court provided analysis and guidelines for Plaintiff  
8 to follow in this claim. Plaintiff’s First Amended Complaint contains basically the exact  
9 same allegations of cruel and unusual punishment. Because Plaintiff’s First Amended  
10 Complaint again fails to state a claim, the Court will recommend that this claim be  
11 dismissed without further leave to amend.

12 **B. Fourteenth Amendment**

13 Plaintiff alleges that there is false information in his prisoner file and requests its  
14 removal.

15 The Due Process Clause protects against the deprivation of liberty without due  
16 process of law. Wilkinson v. Austin, 545 U.S. 209 (2005). In order to state a cause of  
17 action for a deprivation of due process, a plaintiff must first identify a liberty interest for  
18 which the protection is sought. The Due Process Clause does not confer a liberty interest  
19 in freedom from state action taken within a prisoner’s imposed sentence. Sandin v.  
20 Conner, 515 U.S. 472, 480 (1995). However, a state may “create liberty interests which  
21 are protected by the Due Process Clause.” Sandin, 515 U.S. at 483-84. A prisoner has  
22 a liberty interest protected by the Due Process Clause only where the restraint “imposes  
23 atypical and significant hardship on the inmate in relation to the ordinary incidents of prison  
24 life.” Keenan v. Hall, 83 F.3d 1083, 1088 (9th Cir. 1996) (quoting Sandin, 515 U.S. at 484).

25 Again, Plaintiff’s allegations that his prisoner file contains false information fails to  
26 state a cognizable claim for relief. As stated in the Court’s Screening Order, the Due  
27 Process Clause itself does not contain any language that grants a broad right to be free  
28 from false accusations, but guarantees certain procedural protections to defend against

1 false accusations. Freeman v. Rideout, 808 F.2d 949, 951 (2nd Cir. 1986). Plaintiff  
2 received guidance from the Court in its Screening Order, which he apparently decided to  
3 ignore. Because Plaintiff's First Amended Complaint again fails to state a claim, the Court  
4 will recommend that this claim be dismissed without further leave to amend

5 **V. CONCLUSION AND ORDER**

6 The Court finds that Plaintiff's First Amended Complaint fails to state any Section  
7 1983 claims upon which relief may be granted against the named Defendants. Under Rule  
8 15(a) of the Federal Rules of Civil Procedure, leave to amend "shall be freely given when  
9 justice so requires." In addition, "[l]eave to amend should be granted if it appears at all  
10 possible that the plaintiff can correct the defect." Lopez v. Smith, 203 F.3d 1122, 1130 (9th  
11 Cir. 2000) (internal citations omitted). However, in this action, Plaintiff has filed two  
12 complaints and received guidance from the Court in its Screening Order. (ECF Nos. 1, 6,  
13 & 9.) Even after receiving the Court's guidance, Plaintiff failed to make any alterations or  
14 to include additional facts to address the noted deficiencies. In fact, Plaintiff's Amended  
15 Complaint includes almost no factual development of his Section 1983 claims. He again  
16 fails to attribute any wrong doing to any named Defendant. Because of this, the Court  
17 finds that the deficiencies outlined above are not capable of being cured by amendment,  
18 and therefore recommends that further leave to amend not be granted. 28 U.S.C. §  
19 1915(e)(2)(B)(ii); Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987).

20 Accordingly, based on the foregoing, the Court HEREBY RECOMMENDS that this  
21 action be DISMISSED in its entirety, WITH PREJUDICE, for failure to state a claim upon  
22 which relief may be granted.

23 These Findings and Recommendation will be submitted to the United State District  
24 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(l).  
25 Within thirty (30) days after being served with these Findings and Recommendation,  
26 Plaintiff may file written objections with the Court. The document should be captioned  
27 "Objections to Magistrate Judge's Findings and Recommendation." Plaintiff is advised that  
28 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).

2 IT IS SO ORDERED.

3 Dated: May 11, 2011

  
UNITED STATES MAGISTRATE JUDGE

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