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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOSEPH RAYMOND MCCOY,)	1:12cv00983 AWI DLB PC
)	
Plaintiff,)	FINDINGS AND RECOMMENDATIONS
)	REGARDING DISMISSAL OF CERTAIN
vs.)	CLAIMS AND DEFENDANTS
)	
J. CLARK KELSO, et al.,)	
)	
Defendants.)	

Plaintiff Joseph Raymond McCoy (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 28 U.S.C. § 1983. Plaintiff filed this action on June 19, 2012. Pursuant to Court order, Plaintiff filed a First Amended Complaint (“FAC”) on May, 10, 2013.

On December 18, 2013, the Court found that Plaintiff stated an Eighth Amendment deliberate indifference claim against Defendants Stronach, Gonzales, LeMay, Beltran, Fisher, Snell and Tann. Plaintiff was ordered to file an amended complaint, or notify the Court of his willingness to proceed only on these cognizable claims.

On January 2, 2014, Plaintiff notified the Court that he was willing to proceed only on the cognizable claims.¹

¹ Plaintiff will be instructed on service by separate order.

1 **A. SCREENING REQUIREMENT**

2 The Court is required to screen complaints brought by prisoners seeking relief against a
3 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).

4 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
5 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
6 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.

7 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
8 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
9 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C.

10 § 1915(e)(2)(B)(ii).

11 A complaint must contain “a short and plain statement of the claim showing that the
12 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
13 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
14 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing
15 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient
16 factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” Id. (quoting
17 Twombly, 550 U.S. at 555). While factual allegations are accepted as true, legal conclusions are
18 not. Id.

19 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or
20 other federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d
21 1087, 1092 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006);
22 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff’s allegations must link the
23 actions or omissions of each named defendant to a violation of his rights; there is no respondeat
24 superior liability under section 1983. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County,
25 Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235
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1 (9th Cir. 2009); Jones, 297 F.3d at 934. Plaintiff must present factual allegations sufficient to
2 state a plausible claim for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572
3 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls short of meeting this
4 plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

5 **B. PLAINTIFF'S FACTUAL ALLEGATIONS**

6 Plaintiff is currently incarcerated at CSATF in Corcoran, California, where the events at
7 issue occurred.

8 Plaintiff alleges that Defendant Kelso maintains records that show on June 11, 2009,
9 Defendant Stronach examined Plaintiff and found that he had an infection of his right foot.
10 Plaintiff alleges that she knowingly overstepped the scope of her LVN license by prescribing him
11 two tubes of anti-fungal cream. Defendant Stronach also instructed Plaintiff to return to the
12 general population despite his request to see qualified medical personnel and despite obvious
13 signs of swelling, oozing and difficulty walking.
14

15 On June 14, 2009, after following Defendant Stronach's instructions, Plaintiff noticed an
16 increase in swelling, discoloration and drainage, and he had more difficulty walking. Defendant
17 Stronach again refused to provide Plaintiff with access to specialized medical personnel.

18 On June 15, 2009, Defendant Doctors Piere and Peters, who were hired by Defendant
19 Kelso, were notified by an x-ray technician that complications were discovered with Plaintiff's
20 right foot, including drainage, swelling, discoloration and paralysis. Defendants Piere and Peters
21 informed Defendant Kelso that Plaintiff needed to be transported to an outside medical facility
22 for treatment.
23

24 At Fresno Community Hospital, Plaintiff's right foot was placed in a splint and he was
25 given antibiotics. Plaintiff was in severe pain and was unable to walk. Medical experts at
26 Fresno Community Hospital instructed Defendant Kelso to ensure that he received medical
27 treatment.
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1 On June 25, 2009, Defendant Kelso delegated Defendant Doctor Gonzales and Defendant
2 Stronach to carry out Plaintiff's medical orders. Plaintiff told Defendants Gonzales and Stronach
3 that while he was trying to shower, the splint on his right leg became contaminated. Instead of
4 referring him to medical personnel to replace his splint, and despite observing discharge, pain,
5 swelling and difficulty walking, Defendant Gonzales instructed Defendant Stronach to remove
6 the splint and issue an Ace Wrap. Defendant Stronach instructed Plaintiff to pace the Ace Wrap
7 on his own foot and when Plaintiff disagreed, Defendants Gonzales and Stronach ordered
8 Plaintiff to leave the clinic.
9

10 On June 30, 2009, Defendant Gonzales interviewed Plaintiff. When Plaintiff began to
11 explain his dissatisfaction with his medical treatment, Defendant Gonzales told Plaintiff that he
12 would order Defendant Stronach to ensure that staff under her supervision cleaned the wound
13 every two days for one week.

14 On August 13, 2009, Defendant Kelso delegated Defendants Gonzales and Stronach to
15 comply with orders for Plaintiff's medical treatment. Defendant Gonzales issued a priority ducat
16 authorizing custody staff to make sure Plaintiff attended his medical appointment. When
17 custody staff told them that the wheelchair that had been issued to Plaintiff by Defendant
18 Enenmoh had malfunctioned and he could not make the appointment, Defendants Gonzales and
19 Stronach filed a report charging Plaintiff with a rules violation for destroying state property.
20 Rather than give him medical treatment, Defendants Gonzales and Enenmoh had another
21 prisoner retrieve another wheelchair from the clinic and go get Plaintiff. Plaintiff was
22 accompanied by Defendant LeMay.
23

24 When he arrived, Defendants Snell, Gonzales, LeMay and Stronach told Plaintiff that he
25 was being charged with destruction of state property. When Plaintiff asked for another
26 wheelchair, Defendant Gonzales told Plaintiff that he did not need another one. He instructed
27 Defendants Stronach and LeMay to issue Plaintiff another prisoner's walker. When Plaintiff
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1 refused and told them that both of his feet were now infected and that walking without protective
2 footwear would be dangerous, Defendants Gonzales, Stronach, Snell and LeMay decided to
3 force Plaintiff to remain in the general population without protective footwear.

4 On August 28, 2009, Plaintiff asked other prisoners to find a wheelchair so that he could
5 go to the medical clinic. Plaintiff was in severe pain, with excessive swelling, burning and blood
6 in his urine. When Plaintiff arrived, Defendants Gonzales, Stronach and LeMay asked Plaintiff
7 where he got the wheelchair. Plaintiff told them he got it from another prisoner, Defendant
8 Gonzales ordered Defendants Stronach and LeMay to confiscate the wheelchair. Plaintiff tried
9 to disagree, but Defendant Gonzales immediately activated his prison emergency alarm.
10 Defendants Beltran, Fisher, Snell and Tann responded and Plaintiff told them that he could not
11 walk. However, Defendants Gonzales, Stronach and LeMay told them to confiscate the
12 borrowed assistive device.
13

14 Defendant Gonzales also told Defendants Beltran, Fisher, Snell and Tann to remove
15 Plaintiff from the medical clinic, and they ordered staff to pick Plaintiff up off a bench and place
16 him on another bench outside. Plaintiff was given a walker and told to return to his housing unit.
17 Plaintiff tried to walk, but the pain caused him to pass out. When he came to, he felt like he was
18 being carried and noticed that Defendants Gonzales, Stronach and LeMay were standing over
19 him. Plaintiff passed out again and when he regained consciousness, he told Defendant Gonzales
20 that he had severe pain in his back, shoulders and head and requested medical assistance.
21

22 Instead of referring Plaintiff to a medical expert to provide appropriate treatment,
23 Defendant Gonzales instructed Defendants Stronach, LeMay, Beltran, Snell, Fisher and Tann to
24 again remove Plaintiff from the clinic. Custody staff was instructed to assist Gonzales, Stronach,
25 and LeMay in removing Plaintiff. Plaintiff was lowered to the ground from a gurney and rolled
26 to the pavement. While Defendants Stronach, Gonzales, LeMay, Beltran, Snell, Fisher and Tann
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1 watched, Plaintiff made attempts to remove himself from the heat of the sun by crawling on his
2 hands and knees back to his assigned housing.

3 On December 21, 2009, medical specialists at Mercy Hospital diagnosed disseminated
4 coccidiomycosis of the right navicular bone.

5 Plaintiff requests compensatory and punitive damages.

6 **C. ANALYSIS**

7 1. Eighth Amendment

8 While the Eighth Amendment of the United States Constitution entitles Plaintiff to
9 medical care, the Eighth Amendment is violated only when a prison official acts with deliberate
10 indifference to an inmate's serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th
11 Cir. 2012); Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Jett v. Penner, 439 F.3d
12 1091, 1096 (9th Cir. 2006). Plaintiff "must show (1) a serious medical need by demonstrating
13 that failure to treat [his] condition could result in further significant injury or the unnecessary and
14 wanton infliction of pain," and (2) that "the defendant's response to the need was deliberately
15 indifferent." Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d 1091, 1096 (9th Cir. 2006)).
16 Deliberate indifference is shown by "(a) a purposeful act or failure to respond to a prisoner's
17 pain or possible medical need, and (b) harm caused by the indifference." Wilhelm, 680 F.3d at
18 1122 (citing Jett, 439 F.3d at 1096). The requisite state of mind is one of subjective
19 recklessness, which entails more than ordinary lack of due care. Snow, 681 F.3d at 985 (citation
20 and quotation marks omitted); Wilhelm, 680 F.3d at 1122.

21 a. *Defendants Stronach, Gonzales, LeMay, Beltran, Fisher, Snell and Tann*

22 Plaintiff's allegations are sufficient to state an Eighth Amendment medical claim against
23 Defendants Stronach, Gonzales, LeMay, Beltran, Fisher, Snell and Tann.
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1 b. *Defendants Piere and Peters*

2 As to Defendants Piere and Peter, Plaintiff only alleges that they examined him on June
3 15, 2009, and told Defendant Kelso that he needed to be transported to an outside medical
4 facility for treatment. Plaintiff was then treated at Fresno Community Hospital. These
5 allegations do not suggest, in any way, that Defendants Piere or Peters acted with deliberate
6 indifference to a serious medical need.

7 Plaintiff therefore fails to state a claim against Defendants Piere or Peters.

8 c. *Defendants Kelso and Enenmoh*

9 Under section 1983, Plaintiff must link the named Defendants to participation in the
10 violation at issue. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County, Ariz., 609 F.3d 1011,
11 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones
12 v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Liability may not be imposed on supervisory
13 personnel under the theory of respondeat superior, Iqbal, 556 U.S. at 676-77; Simmons, 609 F.3d
14 at 1020-21; Ewing, 588 F.3d at 1235; Jones, 297 F.3d at 934, and as administrators, Defendants
15 Kelso and Enenmoh may only be held liable if they “participated in or directed the violations, or
16 knew of the violations and failed to act to prevent them,” Taylor v. List, 880 F.2d 1040, 1045
17 (9th Cir. 1989); accord Starr v. Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011), cert. denied, 132
18 S.Ct. 2101 (2012); Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009); Preschooler II v. Clark
19 County School Board of Trustees, 479 F.3d 1175, 1182 (9th Cir. 2007); Harris v. Roderick, 126
20 F.3d 1189, 1204 (9th Cir. 1997). Some culpable action or inaction must be attributable to
21 Defendants, and while the creation or enforcement of, or acquiescence in, an unconstitutional
22 policy may support a claim, the policy must have been the moving force behind the violation.
23 Starr, 652 F.3d at 1205; Jeffers v. Gomez, 267 F.3d 895, 914-15 (9th Cir. 2001).

24 In his FAC, Plaintiff alleges that Defendant Kelso maintained records and was appointed
25 by the federal court to oversee healthcare within CDCR. While this may be true, it does not
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1 establish liability against Defendant Kelso because it does not demonstrate that he participated in
2 the alleged acts, or knew of the acts and failed to prevent them. Similarly, Plaintiff states that
3 Defendant Kelso hired Defendants Peters and Piere and later designated Defendants Gonzales
4 and Stronach to carry out medical orders. Again, however, Plaintiff does not allege facts to
5 support a finding that Defendant Kelso participated in the alleged acts, or knew of the alleged
6 medical deprivations and failed to prevent them.

7
8 Similarly, Plaintiff names Defendant Enenmoh, the Chief Medical Officer at CSATF.
9 However, the only factual allegation against Defendant Enenmoh relates to his issuing Plaintiff a
10 wheelchair. This does not demonstrate that Defendant Enenmoh participated in any alleged
11 violations, or knew of any alleged violations and failed to prevent them.

12 Accordingly, Plaintiff fails to state a claim against Defendants Kelso or Enenmoh.

13 2. Official Capacity

14 “The Eleventh Amendment bars suits for money damages in federal court against a state,
15 its agencies, and state officials in their official capacities.” Aholelei v. Dept. of Public Safety,
16 488 F.3d 1144, 1147 (9th Cir. 2007) (citations omitted). However, the Eleventh Amendment
17 does not bar suits seeking damages against state officials in their personal capacities. Hafer v.
18 Melo, 502 U.S. 21, 30 (1991); Porter v. Jones, 319 F.3d 483, 491 (9th Cir. 2003).

19 “Personal-capacity suits . . . seek to impose individual liability upon a government officer
20 for actions taken under color of state law.” Hafer, 502 U.S. at 25; Suever v. Connell, 579 F.3d
21 1047, 1060-61 (9th Cir. 2009). Where a plaintiff is seeking damages against a state official and
22 the complaint is silent as to capacity, a personal capacity suit is presumed given the bar against
23 an official capacity suit. Shoshone-Bannock Tribes v. Fish & Game Comm’n, 42 F.3d 1278,
24 1284 (9th Cir. 1994); Price v. Akaka, 928 F.2d 824, 828 (9th Cir. 1991).

1 Here, Plaintiff purports to sue Defendants in both their official and individual capacity.
2 As Plaintiff is only seeking monetary damages, he may only maintain this action against
3 Defendants in their individual capacities.

4 **D. FINDINGS AND RECOMMENDATIONS**

5 Plaintiff's complaint states a cognizable Eighth Amendment deliberate indifference claim
6 against Defendants Stronach, Gonzales, LeMay, Beltran, Fisher, Snell and Tann. However,
7 Plaintiff fails to state any other claims upon which relief may be granted under section 1983.
8 The Court recommends that all other Defendants (Defendants Kelso, Enemoh, Piere and Peters)
9 and claims be dismissed.
10

11 These Findings and Recommendations will be submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty
13 (30) days after being served with these Findings and Recommendations, Plaintiff may file
14 written objections with the Court. The document should be captioned "Objections to Magistrate
15 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections
16 within the specified time may waive the right to appeal the District Court's order. Martinez v.
17 Ylst, 951 F.2d 1153, 1157 (9th Cir. 1991).
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19 IT IS SO ORDERED.

20 Dated: January 8, 2014

/s/ Dennis L. Beck
21 UNITED STATES MAGISTRATE JUDGE
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