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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RENO RIOS, Plaintiff, v. CONNIE GIPSON, et al., Defendants.	Case No. 1:12-cv-01334-SKO (PC) SECOND SCREENING ORDER DISMISSING ACTION, WITH PREJUDICE, FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED (Doc. 12)
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Second Screening Order

I. Screening Requirement and Standard

Plaintiff Reno Rios, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on August 16, 2012. On March 28, 2013, the Court dismissed Plaintiff’s complaint, with leave to amend. On June 13, 2013, Plaintiff filed an amended complaint.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an 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

1 shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to
2 state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

3 A complaint must contain “a short and plain statement of the claim showing that the
4 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
5 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
6 conclusory statements, do not suffice,” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937
7 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007)), and
8 courts “are not required to indulge unwarranted inferences,” *Doe I v. Wal-Mart Stores, Inc.*, 572
9 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). While factual
10 allegations are accepted as true, legal conclusions are not. *Iqbal*, 556 U.S. at 678.

11 Under section 1983, Plaintiff must demonstrate that each defendant personally participated
12 in the deprivation of his rights. *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). This
13 requires the presentation of factual allegations sufficient to state a plausible claim for relief. *Iqbal*,
14 556 U.S. at 678-79; *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). Prisoners
15 proceeding pro se in civil rights actions are entitled to have their pleadings liberally construed and
16 to have any doubt resolved in their favor, *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)
17 (citations omitted), but nevertheless, the mere possibility of misconduct falls short of meeting the
18 plausibility standard, *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969.

19 **II. Discussion**

20 Plaintiff, who was incarcerated at California State Prison-Corcoran (“CSP-Corcoran”) in
21 the Security Housing Unit (“SHU”) during the events at issue, brings this action against Warden
22 Connie Gipson; Chief Medical Officers J. Wong, E. Clark, and W. J. McGuinness; Chief
23 Executive Officer T. Macias; Healthcare Manager J. Obaiza; Doctors J. Neubarth, J. Kim,
24 Nereddy, Liberstein, Nguyen, Pringle, and Briggs; Family Nurse Practitioner P. Rouch; Physician
25 Assistant Sisodia; and David Champain. Plaintiff seeks monetary damages, declaratory relief, and
26 injunctive relief.¹

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28 ¹ In light of Plaintiff’s transfer to a different institution, his claims for equitable relief are moot. *Alvarez v. Hill*, 667
F.3d 1061, 1063-64 (9th Cir. 2012); *Nelson v. Heiss*, 271 F.3d 891, 897 (9th Cir. 2001); *Dilley v. Gunn*, 64 F.3d 1365,
1368 (9th Cir. 1995); *Johnson v. Moore*, 948 F.2d 517, 519 (9th Cir. 1991).

1 Plaintiff seeks redress for the alleged violation of his rights with respect to dental care and
2 multiple medical issues. While Plaintiff packs many allegations into his twenty-five page
3 amended complaint, the allegations amount to broad assertions of misconduct against many
4 defendants. For the reasons which follow, the Court finds that Plaintiff's amended complaint,
5 even liberally construed, does not demonstrate more than a mere possibility of misconduct, which
6 does not suffice to support a claim. *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969; *see also*
7 *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012) ("The deliberate indifference doctrine is
8 limited in scope.").

9 **B. Eighth Amendment Claims²**

10 **1. Legal Standard**

11 Under section 1983, Plaintiff must demonstrate that each named defendant personally
12 participated in the deprivation of his rights. *Iqbal*, 556 U.S. at 676-77; *Simmons v. Navajo*
13 *County, Ariz.*, 609 F.3d 1011, 1020-21 (9th Cir. 2010); *Ewing v. City of Stockton*, 588 F.3d 1218,
14 1235 (9th Cir. 2009). Liability may not be imposed on supervisory personnel under the theory of
15 *respondeat superior*, as each defendant is only liable for his or her own misconduct. *Iqbal*, 556
16 U.S. at 676-77, 129 S.Ct. at 1948-49; *Ewing*, 588 F.3d at 1235. Supervisory personnel may be
17 liable only if (1) they are personally involved in the constitutional deprivation, or (2) there is a
18 sufficient causal connection between the supervisors' wrongful conduct and the constitutional
19 violation. *Crowley v. Bannister*, 734 F.3d 967, 977 (9th Cir. 2013) (quotation marks and citation
20 omitted).

21 While the Eighth Amendment of the United States Constitution entitles Plaintiff to medical
22 care, the Eighth Amendment is violated only when a prison official acts with deliberate
23 indifference to an inmate's serious medical needs. *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir.
24 2012), *overruled in part on other grounds*, *Peralta v. Dillard*, ___ F.3d ___, ___, No. 09-55907, 2014

25 _____
26 ² Plaintiff also alleges his Fourteenth Amendment right to due process was violated. However, if a constitutional
27 claim is covered by a specific constitutional provision, the claim must be analyzed under the standard appropriate to
28 that specific provision, not under the rubric of substantive due process. *County of Sacramento v. Lewis*, 523 U.S. 833,
843, 118 S.Ct. 1708 (1998) (quotation marks and citation omitted). The majority of Plaintiff's claims are covered by
the Eighth Amendment, and for those claims, Plaintiff is necessarily limited to seeking redress under the Eighth
Amendment.

1 WL 878830, at *3 (9th Cir. Mar. 6, 2014); *Wilhelm*, 680 F.3d at 1122; *Jett v. Penner*, 439 F.3d
2 1091, 1096 (9th Cir. 2006). Negligent medical care does *not* support a claim for relief under
3 section 1983. *Snow*, 681 F.3d at 987-88. Plaintiff “must show (1) a serious medical need by
4 demonstrating that failure to treat [his] condition could result in further significant injury or the
5 unnecessary and wanton infliction of pain,” and (2) that “the defendant’s response to the need was
6 deliberately indifferent.” *Wilhelm*, 680 F.3d at 1122. Deliberate indifference is shown by “(a) a
7 purposeful act or failure to respond to a prisoner’s pain or possible medical need, and (b) harm
8 caused by the indifference.” *Wilhelm*, 680 F.3d at 1122. The requisite state of mind is one of
9 subjective recklessness, which entails more than ordinary lack of due care. *Snow*, 681 F.3d at 985;
10 *Wilhelm*, 680 F.3d at 1122.

11 **2. Findings**

12 Plaintiff alleges that while in the SHU at CSP-Corcoran, he was not provided with
13 adequate or appropriate treatment for allergies, asthma, dry skin, nerve pain, digestive problems,
14 hearing impairment, plantar fasciitis, vision issues, and a dental condition. The various medical
15 and dental conditions identified by Plaintiff suffice to support, at the pleading stage, the existence
16 of objectively serious medical and dental needs. *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir.
17 2000) (existence of an injury that a reasonable doctor would find important and worthy of
18 comment or treatment, the presence of a medical condition that significantly affects an
19 individual’s daily activities, and/or the existence of chronic or substantial pain are indications of a
20 serious medical need). However, Plaintiff has not alleged any specific facts supporting a claim
21 that the named defendants knew of and disregarded a substantial risk of serious harm to his health.
22 *Wilhelm*, 680 F.3d at 1122-23.

23 Plaintiff clearly disagrees with the courses of treatment chosen by prison medical and
24 dental staff, and he believes medical staff at CSP-Corcoran should have allowed him to have the
25 same medications and devices he was provided with at other institutions, but more than Plaintiff’s
26 mere dissatisfaction with the care he received must be shown. *Snow*, 681 F.3d at 987-88;
27 *Wilhelm*, 680 F.3d at 1122-23. Furthermore, the mere fact that prison officials mentioned
28 budgetary constraints and/or security constraints dictated by Plaintiff’s SHU housing in

1 determining which course of treatment to pursue does not compel a conclusion that they must have
2 been deliberately indifferent.³ See *Peralta*, 2014 WL 878830, at *3 (“What resources were
3 available is highly relevant because they define the spectrum of choices that officials had at their
4 disposal.”); *Griffin v. Gomez*, 741 F.3d 10, 20-21 (9th Cir. 2014) (“Internal [prison] security is
5 peculiarly a matter normally left to the discretion of prison administrators.”) (citation and internal
6 quotation marks omitted); *Farmer v. Brennan*, 511 U.S. 825, 844-45, 114 S.Ct. 1970 (1994) (“A
7 prison official’s duty under the Eighth Amendment is to ensure reasonable safety, a standard that
8 incorporates due regard for prison officials’ unenviable task of keeping dangerous men in safe
9 custody under humane conditions.”).

10 Plaintiff was previously provided with the applicable legal standard and notified of the
11 need to link each named defendant to actions or omissions which demonstrate a violation of his
12 rights. Instead of curing the deficiencies in his claims, Plaintiff relies on general and conclusory
13 allegations to bolster his claim that prison staff members were deliberately indifferent to his
14 medical and dental needs. Accordingly, the Court finds that Plaintiff fails to state claim for
15 violation of the Eighth Amendment arising out of the medical and dental care he was provided
16 with while in the SHU.⁴

17 **C. Claim Arising from Deficient Inmate Appeals Process**

18 Plaintiff also seeks to impose liability on Defendant Gipson, and other unnamed wardens,
19 for failing to provide a “reliable” appeals process. Plaintiff alleges that his appeals were
20 improperly screened out, lost, and/or destroyed, and that staff breached their fiduciary duty by
21 failing to process his appeals.

22 This claim fails as a matter of law. Plaintiff has no constitutional right to an appeals
23 process, and the existence of an appeals process does not create any substantive rights upon which
24 Plaintiff may base a claim. *Wilkinson v. Austin*, 545 U.S. 209, 221, 125 S.Ct. 2384 (2005);

25 ³ Plaintiff alleges that he is serving a life sentence and he was placed in the SHU after being validated as a Mexican
26 Mafia gang associate. (Amend. Comp., ¶¶11, 12.) Plaintiff is now incarcerated at Kern Valley State Prison, which
27 does not have a SHU. Fed. R. Evid. 201(b); Doc. 13.

28 ⁴ For clarity of the record, the Court notes that Plaintiff’s allegations he should have been permitted a fan for
ventilation and he should have been permitted to control the lights in his cell are part of his medical care claim, as
Plaintiff alleges his asthma and glaucoma and/or cataracts necessitated those medical accommodations.

1 *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003); *Mann v. Adams*, 855 F.2d 639, 640 (9th
2 Cir. 1988).

3 **D. Discrimination Claims**

4 Plaintiff attempts to bring discrimination claims, citing to 42 U.S.C. § 1981 and 42 U.S.C.
5 § 2000a. However, section 1981 prohibits racial discrimination in the making and enforcement of
6 contracts, *Pittman v. Oregon, Employment Dept.*, 509 F.3d 1065, 1067 (9th Cir. 2007), and section
7 2000a prohibits discrimination in places of public accommodation, *U.S. v. Allen*, 341 F.3d 870,
8 876-77 (9th Cir. 2003); *Zochlinski v. Regents of University of California*, No. CIV 2:10-cv-1824-
9 KJM-JFM (PS), 2011 WL 590877, at *6 (E.D. Cal. Feb. 10, 2011) (findings and recommendations
10 in full on Aug. 11, 2011). Neither section is applicable here.

11 **E. ADA Claim**

12 Finally, Plaintiff alleges a violation of the Americans with Disabilities Act (“ADA”). 42
13 U.S.C. § 12132. “To establish a violation of Title II of the ADA, a plaintiff must show that (1)
14 [he] is a qualified individual with a disability; (2) [he] was excluded from participation in or
15 otherwise discriminated against with regard to a public entity’s services, programs, or activities;
16 and (3) such exclusion or discrimination was by reason of [his] disability.” *Lovell v. Chandler*,
17 303 F.3d 1039, 1052 (9th Cir. 2002); *accord Simmons*, 609 F.3d at 1021; *McGary v. City of*
18 *Portland*, 386 F.3d 1259, 1265 (9th Cir. 2004).

19 Plaintiff has not alleged any facts supporting the existence of a viable ADA claim.
20 Plaintiff allegedly needs earphones to hear his television, and he was unhappy with the earphones
21 prescribed. However, “[t]he ADA prohibits discrimination because of disability, not inadequate
22 treatment for disability,” *Simmons*, 609 F.3d at 1022 (citing *Bryant v. Madigan*, 84 F.3d 246, 249
23 (7th Cir. 1996)), and Plaintiff’s amended complaint is devoid of any facts supporting a claim that
24 he was discriminated against by any entity on the basis of his disability.

25 **III. Conclusion and Order**

26 Plaintiff’s amended complaint fails to state a claim under section 1983 or the ADA.
27 Plaintiff was previously given notice of the deficiencies and provided with an opportunity to
28 amend, and further leave to amend is not warranted based on the nature of the deficiencies.

1 *Akhtar v. Mesa*, 698 F.3d 1202, 1212-13 (9th Cir. 2012); *Lopez*, 203 F.3d at 1130-31; *Noll v.*
2 *Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987).

3 Accordingly, this action is HEREBY ORDERED DISMISSED, with prejudice, based on
4 Plaintiff's failure to state claim. The Clerk of the Court shall enter judgment and close the file.

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7 IT IS SO ORDERED.

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9 Dated: April 8, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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