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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TODD KINNAMON,)	1:13cv00109 DLB PC
)	
Plaintiff,)	ORDER DISMISSING SECOND
)	AMENDED COMPLAINT WITHOUT
vs.)	LEAVE TO AMEND
)	
HUBBARD, et al.,)	
)	
Defendants.)	

Plaintiff Todd Kinnamon, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action on January 24, 2013. The Court dismissed the complaint with leave to amend on September 6, 2013. On September 26, 2013, Plaintiff filed a First Amended Complaint (“FAC”). His FAC was dismissed on March 6, 2014, with leave to amend. On March 26, 2014, Plaintiff filed his Second Amended Complaint (“SAC”). He names California State Prison, Corcoran (“CSP”) Warden Susan Hubbard and R.N. Soto as Defendants.¹

A. LEGAL STANDARD

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).

¹ On March 20, 2013, Plaintiff consented to the jurisdiction of the United States Magistrate Judge for all purposes.

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

4 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
5 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
6 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C.

7 § 1915(e)(2)(B)(ii).

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

17 To state a claim, Plaintiff must demonstrate that each defendant personally participated in
18 the deprivation of his rights. Id. at 1949. This requires the presentation of factual allegations
19 sufficient to state a plausible claim for relief. Iqbal, 129 S.Ct. at 1949-50; Moss v. U.S. Secret
20 Service, 572 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls short of
21 meeting this plausibility standard. Iqbal, 129 S.Ct. at 1949-50; Moss, 572 F.3d at 969.

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23 **B. SUMMARY OF PLAINTIFF’S ALLEGATIONS**

24 Plaintiff is currently incarcerated at the Richard J. Donovan Correctional Facility in San
25 Diego, California. The events at issue occurred while Plaintiff was housed at CSP.

26 Plaintiff alleges that on April 9, 2012, he had surgery on his left knee. Plaintiff was
27 thereafter dependent on a walker and used serious pain medication.

1 On April 21, 2012, Plaintiff was directed to walk on a dirt path “consisting of rocks and
2 potholes” with his walker. ECF No. 13, at 4. Plaintiff said that the path was not safe to walk on.
3 However, staff directing the line said that the path was the only way to the pill line.

4 Plaintiff continued walking, but the right side of his walker got caught in one of the
5 potholes and he fell onto his left knee, which was bandaged from surgery. Plaintiff also injured
6 his back. He was placed into a wheelchair and rushed to the yard clinic, then to the acute care
7 division of the prison hospital.

8 Defendant Soto determined that Plaintiff’s knee was okay and she sent him back to his
9 cell without checking on the stitches from his surgery. Plaintiff was rescheduled to see the yard
10 doctor.
11

12 Seven days passed “without dressing” and Plaintiff noticed that his left knee was badly
13 infected. He went to the medical clinic on the yard and the acting LVN sent him back to the
14 hospital. The doctor pulled the bandage off and said, “What happened? Why is the stitch area
15 infected?” ECF No. 13, at 5. Plaintiff told the doctor what happened. The doctor inserted an IV
16 line and admitted Plaintiff to the hospital.

17 After seven days in the hospital, the doctor and physical therapist recommended that
18 Plaintiff be placed in a wheelchair due to the severity of the new injury. They also recommended
19 that the doctor who performed the surgery be contacted.
20

21 Plaintiff states that his knee cannot be fixed, and that the only alternative is a knee
22 replacement “as a result of the fall and the lacking of care to the knee after the surgery.” ECF
23 No. 13, at 5. Plaintiff contends that as of the date of his SAC, he is still suffering pain from the
24 incident.

25 Plaintiff contends that Defendant Hubbard violated his Eighth Amendment right to
26 personal safety because she was aware of the unsafe pathway before Plaintiff fell. He alleges
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1 that she could have ordered staff to bring pills to the yard building to prevent this, but chose not
2 to.

3 Plaintiff also contends that Defendant Soto acted with deliberate indifference when she
4 “acted in negligence as to improper care of Plaintiff’s knee.” ECF No. 13, at 6. He alleges that
5 she was aware of his severe injury and chose not to dress his knee according to protocol.

6 **C. ANALYSIS**

7
8 1. Eighth Amendment Conditions of Confinement

9 The Eighth Amendment’s prohibition against cruel and unusual punishment protects
10 prisoners not only from inhumane methods of punishment but also from inhumane conditions of
11 confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006) (citing Farmer v.
12 Brennan, 511 U.S. 825, 847, 114 S.Ct. 1970 (1994) and Rhodes v. Chapman, 452 U.S. 337, 347,
13 101 S.Ct. 2392 (1981)) (quotation marks omitted). While conditions of confinement may be, and
14 often are, restrictive and harsh, they must not involve the wanton and unnecessary infliction of
15 pain. Morgan, 465 F.3d at 1045 (citing Rhodes, 452 U.S. at 347) (quotation marks omitted).
16 Thus, conditions which are devoid of legitimate penological purpose or contrary to evolving
17 standards of decency that mark the progress of a maturing society violate the Eighth
18 Amendment. Morgan, 465 F.3d at 1045 (quotation marks and citations omitted); Hope v. Pelzer,
19 536 U.S. 730, 737, 122 S.Ct. 2508 (2002); Rhodes, 452 U.S. at 346.

20
21 Prison officials have a duty to ensure that prisoners are provided adequate shelter, food,
22 clothing, sanitation, medical care, and personal safety, Johnson v. Lewis, 217 F.3d 726, 731 (9th
23 Cir. 2000) (quotation marks and citations omitted), but not every injury that a prisoner sustains
24 while in prison represents a constitutional violation, Morgan, 465 F.3d at 1045 (quotation marks
25 omitted). To maintain an Eighth Amendment claim, a prisoner must show that prison officials
26 were deliberately indifferent to a substantial risk of harm to his health or safety. E.g., Farmer,
27 511 U.S. at 847; Thomas v. Ponder, 611 F.3d 1144, 1150-51 (9th Cir. 2010); Foster v. Runnels,

1 554 F.3d 807, 812-14 (9th Cir. 2009); Morgan, 465 F.3d at 1045; Johnson, 217 F.3d at 731;
2 Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

3 Plaintiff alleges that Defendant Hubbard violated his Eighth Amendment rights because
4 she knew about the path at issue, but chose not to deliver pills to inmates. Plaintiff's claim is
5 wholly speculative and lacks any supporting factual detail. Moreover, even assuming that she
6 knew of the path, her failure to remedy it does not necessarily rise to an Eighth Amendment
7 violation.

8
9 The Court explained this to Plaintiff in the prior screening order, but he has failed to
10 correct the deficiency. Accordingly, Plaintiff fails to state a claim against Defendant Hubbard.

11 2. Eighth Amendment Deliberate Indifference

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

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23 Plaintiff alleges that he saw Defendant Soto after he fell, but that she did not check on his
24 stitches. Plaintiff was scheduled to see a yard doctor, but after seven days, Plaintiff noticed that
25 his left knee was infected. These facts, however, are insufficient to demonstrate that Defendant
26 Soto acted with deliberate indifference. Plaintiff states that Defendant Soto determined that his
27 knee was okay and sent him back to his cell without looking at his stitches, but he fails to allege
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1 that she knew of, and disregarded, a substantial risk to Plaintiff's health or safety. Farmer, 511
2 U.S. at 837.

3 The Court explained this to Plaintiff in the prior screening order. Plaintiff attempts to
4 correct the deficiency by alleging that Defendant Soto acted with deliberate indifference when
5 she "acted in negligence as to improper care of Plaintiff's knee." ECF No. 13, at 6. He alleges
6 that she was aware of his severe injury and chose not to dress his knee according to protocol.
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8 Plaintiff's additional allegations, however, are insufficient to demonstrate that Defendant
9 Soto acted with deliberate indifference. The requisite state of mind is one of subjective
10 recklessness, which entails more than ordinary lack of due care. Snow, 681 F.3d at 985 (citation
11 and quotation marks omitted); Wilhelm, 680 F.3d at 1122. Even assuming that Defendant Soto
12 erred, an Eighth Amendment claim may not be premised on even gross negligence by a
13 physician. Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990).

14 Moreover, Plaintiff's statement that she knew of his injury and chose not to provide
15 treatment is not supported by any facts.

16 Plaintiff's allegations against Defendant Soto do not rise to the level of an Eighth
17 Amendment violation. Plaintiff therefore fails to state a claim against her.

18 **D. CONCLUSION AND ORDER**

19 Plaintiff's SAC fails to state a claim under section 1983. Plaintiff has now been given
20 two opportunities to correct these deficiencies, but has failed to do so. In the Court's last
21 screening order, the Court stated that this would be his final opportunity to amend. Accordingly,
22 because Plaintiff has had two opportunities to correct his claims and he has not provided any
23 additional factual allegations, the Court finds that further leave to amend is not warranted.
24 Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Noll v. Carlson, 809 F.2d 1446, 1448-49
25 (9th Cir. 1987).
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1 Accordingly, Plaintiff's SAC is DISMISSED WITHOUT LEAVE TO AMEND.

2 This terminates this action in its entirety.

3
4 IT IS SO ORDERED.

5 Dated: September 17, 2014

6 /s/ Dennis L. Beck
7 UNITED STATES MAGISTRATE JUDGE