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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 RUBEN S. ESPARZA,

12 Plaintiff,

13 vs.

14 MARGARET MIMS, et al.,

15 Defendants.
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1:13-cv-00593-GSA-PC

ORDER DISMISSING CASE, WITH
PREJUDICE, FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF MAY BE
GRANTED UNDER SECTION 1983
(Doc. 7.)

ORDER THAT THIS DISMISSAL IS
SUBJECT TO THE "THREE-STRIKES"
PROVISION SET FORTH IN 28 U.S.C. §
1915(g)

ORDER FOR CLERK TO CLOSE THIS
CASE

20 **I. BACKGROUND**

21 Ruben S. Esparza ("Plaintiff") is a prisoner proceeding pro se and in forma pauperis
22 with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
23 commencing this action on April 24, 2013. (Doc. 1.)

24 On May 3, 2013, Plaintiff consented to Magistrate Judge jurisdiction pursuant to 28
25 U.S.C. § 636(c) in this action, and no other parties have made an appearance. (Doc. 5.)
26 Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of
27 California, the undersigned shall conduct any and all proceedings in the case until such time as
28 reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

1 On September 16, 2013, the Court dismissed Plaintiff's Complaint for failure to state a
2 claim, with leave to amend. (Doc. 6.) On September 23, 2013, Plaintiff filed the First
3 Amended Complaint, which is now before the court for screening. (Doc. 7.)

4 **II. SCREENING REQUIREMENT**

5 The court is required to screen complaints brought by prisoners seeking relief against a
6 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
7 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
8 legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or
9 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
10 § 1915A(b)(1),(2). "Notwithstanding any filing fee, or any portion thereof, that may have been
11 paid, the court shall dismiss the case at any time if the court determines that the action or
12 appeal fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

13 A complaint is required to contain "a short and plain statement of the claim showing
14 that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
15 not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
16 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937,
17 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955
18 (2007)). While a plaintiff's allegations are taken as true, courts "are not required to indulge
19 unwarranted inferences." Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
20 (internal quotation marks and citation omitted). Plaintiff must set forth "sufficient factual
21 matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Iqbal 556 U.S.
22 at 678. While factual allegations are accepted as true, legal conclusions are not. Id.

23 To state a viable claim for relief, Plaintiff must set forth sufficient factual allegations to
24 state a plausible claim for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572
25 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls short of meeting this
26 plausibility standard. Id.

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1 **III. SUMMARY OF FIRST AMENDED COMPLAINT**

2 Plaintiff is a prisoner in the custody of the Fresno County Jail in Fresno, California,
3 where the events at issue in the First Amended Complaint allegedly occurred. Plaintiff names
4 as defendants Margaret Mims, Dr. Aw, Dr. Rucker, and the Medical Staff at the jail. Plaintiff's
5 factual allegations follow, in their entirety:

6 "I was not provided adequate medical attention. I was deprived
7 of medication several weeks at a time. I was not given proper
8 medical treatment on several occasion[s]. I was left to endure
9 grat (sic) pain several weeks, & months. I submitted (sic) several
10 medical slips to be seen by my floor Dr. with no responce (sic)
11 or treatment. I submitted (sic) grievances witch (sic) where (sic)
not answered in a timely manner, with no fair out come (sic) as
well. I was placed in a living area (G.P.) not suitable for my
handy caps (sic) & medical disabilities. Attached are grievances
for medical attention as well as treatment. Attached ar (sic)
medical slips for attention & treatment."

12 (First Amended Cmp at 3 ¶IV.) Plaintiff requests monetary and injunctive relief.

13 **IV. PLAINTIFF'S CLAIMS**

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

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

19 42 U.S.C. § 1983. "Section 1983 . . . creates a cause of action for violations of the federal
20 Constitution and laws." Sweaney v. Ada County, Idaho, 119 F.3d 1385, 1391 (9th Cir. 1997)
21 (internal quotations omitted). "To the extent that the violation of a state law amounts to the
22 deprivation of a state-created interest that reaches beyond that guaranteed by the federal
23 Constitution, Section 1983 offers no redress." Id.

24 **A. Supervisory Liability – defendant Margaret Mims**

25 Plaintiff has named Margaret Mims, Fresno County Sheriff, who holds a supervisory
26 position. Plaintiff is advised that liability may not be imposed on supervisory personnel under

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1 section 1983 on the theory of respondeat superior, as each defendant is only liable for his or her
2 own misconduct. Iqbal, 556 U.S. at 676; Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th
3 Cir. 2009). A supervisor may be held liable only if he or she “participated in or directed the
4 violations, or knew of the violations and failed to act to prevent them.” Taylor v. List, 880 F.2d
5 1040, 1045 (9th Cir. 1989); accord Starr v. Baca, 652 F.3d 1202, 1205-06 (9th Cir. 2011);
6 Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009); Preschooler II v. Clark County School
7 Board of Trustees, 479 F.3d 1175, 1182 (9th Cir. 2007); Harris v. Roderick, 126 F.3d 1189,
8 1204 (9th Cir. 1997). Therefore, to the extent that Plaintiff seeks to impose liability upon
9 defendant Margaret Mims, or any of the other defendants, in their supervisory capacity,
10 Plaintiff fails to state a claim.

11 **B. Personal Participation**

12 Under section 1983, Plaintiff must demonstrate that each defendant *personally*
13 participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
14 2002) (emphasis added). Plaintiff was advised in the court’s prior screening order that in order
15 to state a claim and hold a defendant liable, he must *name* the individual defendant, *describe*
16 where that defendant is employed and in what capacity, and explain how that defendant acted
17 under color of law. (Doc. 6 at 3:13-16.) Plaintiff was also advised that he “may not simply file
18 a complaint and refer the Court to the exhibits.” (Id. at 3:9-11.) Plaintiff fails to follow the
19 court’s instructions. Plaintiff does not make any allegations in the First Amended Complaint
20 showing that an individual named defendant personally acted against him. Further, Plaintiff
21 names the “Medical Staff” as defendants, which is insufficient. Plaintiff was advised that he
22 must describe what each defendant, *by name*, did to violate his rights. (Id. at 3:15-18.)

23 Plaintiff fails to allege any personal conduct by any of the individual Defendants in the
24 First Amended Complaint. Therefore, Plaintiff fails to state any claims against any of the
25 Defendants.

26 **C. Eighth Amendment Medical Claim**

27 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an
28 inmate must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d

1 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285 (1976)).
2 The two-part test for deliberate indifference requires the plaintiff to show (1) “a serious
3 medical need’ by demonstrating that ‘failure to treat a prisoner’s condition could result in
4 further significant injury or the unnecessary and wanton infliction of pain,” and (2) “the
5 defendant’s response to the need was deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting
6 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds by WMX
7 Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (internal quotations
8 omitted)). Deliberate indifference is shown by “a purposeful act or failure to respond to a
9 prisoner’s pain or possible medical need, and harm caused by the indifference.” Id. (citing
10 McGuckin, 974 F.2d at 1060). Deliberate indifference may be manifested “when prison
11 officials deny, delay or intentionally interfere with medical treatment, or it may be shown by
12 the way in which prison physicians provide medical care.” Id. Where a prisoner is alleging a
13 delay in receiving medical treatment, the delay must have led to further harm in order for the
14 prisoner to make a claim of deliberate indifference to serious medical needs. McGuckin at
15 1060 (citing Shapely v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir.
16 1985)).

17 “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051,
18 1060 (9th Cir. 2004). “Under this standard, the prison official must not only ‘be aware of the
19 facts from which the inference could be drawn that a substantial risk of serious harm exists,’ but
20 that person ‘must also draw the inference.’” Id. at 1057 (quoting Farmer v. Brennan, 511 U.S.
21 825, 837, 114 S.Ct. 1970 (1994)). “If a prison official should have been aware of the risk, but
22 was not, then the official has not violated the Eighth Amendment, no matter how severe the
23 risk.” Id. (quoting Gibson v. County of Washoe, Nevada, 290 F.3d 1175, 1188 (9th Cir.
24 2002)). “A showing of medical malpractice or negligence is insufficient to establish a
25 constitutional deprivation under the Eighth Amendment. Id. at 1060. “[E]ven gross negligence
26 is insufficient to establish a constitutional violation.” Id. (citing Wood v. Housewright, 900
27 F.2d 1332, 1334 (9th Cir. 1990)).

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1 Plaintiff has demonstrated that he had serious medical needs because he suffered great
2 pain. However, Plaintiff fails to allege facts showing that any of the Defendants were
3 deliberately indifferent to those needs. Plaintiff fails to show that any of the Defendants
4 personally acted or failed to act while knowing of and deliberately disregarding a substantial
5 risk of serious harm to Plaintiff. Accordingly, Plaintiff fails to state a cognizable claim for
6 inadequate medical care under the Eighth Amendment.

7 **D. Inmate Appeals Process**

8 Plaintiff also alleges that he submitted grievances which were not answered in a timely
9 manner, with no fair outcome. Defendants' actions in responding to Plaintiff's grievances,
10 alone, cannot give rise to any claims for relief under section 1983 for violation of due process.
11 "[A prison] grievance procedure is a procedural right only, it does not confer any substantive
12 right upon the inmates." Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993) (citing Azeez v.
13 DeRobertis, 568 F. Supp. 8, 10 (N.D. Ill. 1982)); see also Ramirez v. Galaza, 334 F.3d 850, 860
14 (9th Cir. 2003) (no liberty interest in processing of appeals because no entitlement to a specific
15 grievance procedure); Massey v. Helman, 259 F.3d 641, 647 (7th Cir. 2001) (existence of
16 grievance procedure confers no liberty interest on prisoner); Mann v. Adams, 855 F.2d 639,
17 640 (9th Cir. 1988). "Hence, it does not give rise to a protected liberty interest requiring the
18 procedural protections envisioned by the Fourteenth Amendment." Azeez, 568 F. Supp. at 10;
19 Spencer v. Moore, 638 F. Supp. 315, 316 (E.D. Mo. 1986). Actions in reviewing a prisoner's
20 administrative appeal, without more, are not actionable under section 1983. Buckley, 997 F.2d
21 at 495. Thus, since he has neither a liberty interest, nor a substantive right in inmate appeals,
22 Plaintiff fails to state a cognizable claim for the processing and/or reviewing of his 602 inmate
23 appeals.

24 **E. Adverse Conditions of Confinement – Eighth Amendment**

25 "An Eighth Amendment claim that a prison official has deprived inmates of humane
26 conditions of confinement must meet two requirements, one objective and the other subjective."
27 Allen v. Sakai, 48 F.3d 1082, 1087 (9th Cir. 2010) cert. denied, 514 U.S. 1065 (1995). The
28 objective requirement is met if the prison official's acts or omissions deprived a prisoner of "the

1 minimal civilized measure of life's necessities.” Id. (quoting Farmer v. Brennan, 511 U.S. 825,
2 834 (1994)). To satisfy the subjective prong, a plaintiff must show more than mere
3 inadvertence or negligence. Neither negligence nor gross negligence will constitute deliberate
4 indifference. Farmer, 511 U.S. at 833, & n. 4; Estelle v. Gamble, 429 U.S. 97, 106 (1976). The
5 Farmer court concluded that “subjective recklessness as used in the criminal law is a familiar
6 and workable standard that is consistent with the Cruel and Unusual Punishments Clause” and
7 adopted this as the test for deliberate indifference under the Eighth Amendment. Farmer, 511
8 U.S. at 839-40.

9 Plaintiff alleges that he was placed in a living area not suitable for his handicaps and
10 medical disabilities. However, Plaintiff does not describe conditions that rise to the level of an
11 Eighth Amendment violation. Plaintiff fails to allege facts showing that a prison official's acts
12 or omissions deprived him of “the minimal civilized measure of life’s necessities.” Moreover,
13 Plaintiff fails to describe any conduct by an individual Defendant which violated his rights.
14 Therefore, Plaintiff fails to state a claim for adverse conditions of confinement under the Eighth
15 Amendment.

16 **V. CONCLUSION AND ORDER**

17 The Court finds that Plaintiff’s First Amended Complaint fails to state any cognizable
18 claims upon which relief may be granted under § 1983. In this action, the Court previously
19 granted Plaintiff an opportunity to amend the complaint, with ample guidance by the Court.
20 Plaintiff has now filed two complaints without alleging facts against any of the defendants
21 which state a claim under § 1983. The Court finds that the deficiencies outlined above are not
22 capable of being cured by amendment, and therefore further leave to amend should not be
23 granted. 28 U.S.C. § 1915(e)(2)(B)(ii); Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000).

24 Therefore, **IT IS HEREBY ORDERED** that:

- 25 1. Pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), this action is
26 DISMISSED with prejudice for failure to state a claim upon which relief may be
27 granted under § 1983;

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2. This dismissal is subject to the “three-strikes” provision set forth in 28 U.S.C. § 1915(g); Silva v. Vittorio, 658 F.3d 1090, 1098 (9th Cir. 2011); and

3. The Clerk is directed to close this case.

IT IS SO ORDERED.

Dated: May 8, 2014

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE