

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOAQUIN GUERRA,)	1:13-cv-01077-AWI-BAM (PC)
)	
Plaintiff,)	FINDINGS AND RECOMMENDATIONS
)	REGARDING DISMISSAL OF CLAIMS
v.)	AGAINST DEFENDANTS IN THEIR
)	OFFICIAL CAPACITIES
KERN COUNTY SHERIFF'S)	
DEPARTMENT, et al.,)	
)	FOURTEEN-DAY DEADLINE
Defendants.)	

I. Screening Requirement and Standard

Plaintiff Joaquin Guerra (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action while a pre-trial detainee at the Kern County Jail. On June 10, 2014, the Court dismissed the complaint with leave to amend. Plaintiff’s first amended complaint, filed on July 7, 2014, is currently before the Court for screening.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C. § 1915(e)(2)(B)(ii).

1 A complaint must contain “a short and plain statement of the claim showing that the
2 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
3 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
4 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937,
5 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65
6 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
7 unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
8 (internal quotation marks and citation omitted).

9 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
10 liberally construed and to have any doubt resolved in their favor. Hebbe v. Pliler, 627 F.3d 338,
11 342 (9th Cir. 2010) (citations omitted). To survive screening, Plaintiff’s claims must be facially
12 plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each
13 named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949
14 (quotation marks omitted); Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir.
15 2009). The sheer possibility that a defendant acted unlawfully is not sufficient, and mere
16 consistency with liability falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at
17 678, 129 S.Ct. at 1949 (quotation marks omitted); Moss, 572 F.3d at 969.

18 **II. Plaintiff’s Allegations**

19 Plaintiff is currently housed at the California Substance Abuse Treatment Facility in
20 Corcoran, California. The events alleged in the complaint occurred while Plaintiff was a pretrial
21 detainee housed at the Kern County Jail. Plaintiff names Deputy Sheriff Chris Sweeney, Officer
22 Feely, and an unknown nurse, Jane Doe #1, as defendants in their individual and official
23 capacities.

24 Plaintiff alleges as follows:

25 On May 28-2012 after being booked into the Kern County Jail I asked bothe
26 Arresting Officer Chris Sweeney & booking Officer Feely if I could get medical
27 attention for a bad eye. At that time one of the officers asked the Jane Doe #1
28 Nurse if she would see me she looked my way and denied me even though I told
Jane Doe #1 Nurse and officer Sweeney & Feely that I was in servier pain. Just
by looking at me I needed medical attention my eye was chut and it was

1 discharging liquid it was obvious I need to go to the hospital because Officer
2 Feely said that (Jane Doe #1) Nurse never sends anyone to the (Hospital) and/or
3 KMC right after he said this all of them Officer Sweeney & Feely, (Jane Doe #1
Nurse) started laughing and joking.

4 (ECF No. 11, pp. 3-4) (unedited text). Plaintiff seeks payment of his medical bills, continued
5 medical care and compensatory damages for lost sight in his right eye.

6 **III. Discussion**

7 **A. Official Capacity – Eleventh Amendment**

8 An official capacity claim is another way of pleading a claim against the government
9 entity of which the official is an agent. Monell v. Department of Social Services, 436 U.S. 658,
10 690 n. 55, 98 S.Ct. 2188, 56 L.Ed.2d 611 (1978). Plaintiff’s claims against defendants in their
11 official capacities are essentially claims against the Kern County Sheriff’s Department.

12 A claim for civil rights violations pursuant to 42 U.S.C. § 1983 requires a “person” who
13 acted under color of state law. 42 U.S.C. § 1983. Local governmental units, such as counties or
14 municipalities, are considered “persons” within the meaning of Section 1983. Will v. Michigan
15 Dept. of State Police, 491 U.S. 58, 70, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). Municipal
16 departments and sub-units, including police departments, are generally not considered “persons”
17 within the meaning of Section 1983. United States v. Kama, 394 F.3d 1236, 1239 (9th Cir.2005)
18 (Ferguson, J., concurring) (findings municipal police departments and bureaus are generally not
19 considered “persons” within the meaning of 42 U.S.C. § 1983); see also Sanders v. Aranas, 2008
20 WL 268972, *3 (the Fresno Police Department is not a proper defendant because it is a sub-
21 department of the City of Fresno and is not a person within the meaning of § 1983).

22 The Kern County Sheriff’s Department may not be sued under § 1983 for an injury
23 inflicted solely by its employees or agents. Instead, it is only when execution of a government’s
24 policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be
25 said to represent official policy, inflicts the injury that the government as an entity is responsible
26 under § 1983.” Monell, 436 U.S. at 694.

27 Here, Plaintiff has not alleged any regulation, policy or custom implemented by the Kern
28 County Sheriff’s Department that resulted in the alleged injury. Accordingly, the complaint fails

1 to state a claim against the Kern County Sheriff’s Department or against Defendants in their
2 official capacities.

3 **B. Doe Defendant**

4 Plaintiff has asserted allegations against an unknown nurse. “As a general rule, the use of
5 ‘John Doe’ to identify a defendant is not favored.” Gillespie v. Civiletti, 629 F.2d 637, 642
6 (9th Cir. 1980). Plaintiff is advised that John Doe or Jane Doe defendants (i.e., unknown
7 defendants) cannot be served by the United States Marshal until Plaintiff has identified them as
8 actual individuals and amended his complaint to substitute names for John Doe or Jane Doe.

9 **C. Deliberate Indifference to Serious Medical Needs**

10 In cases of deliberate indifference to a serious medical need, a pretrial detainee’s rights
11 are analyzed under the Due Process Clause Fourteenth Amendment, while a convicted prisoner’s
12 rights are analyzed under the Eighth Amendment. Bell v. Wolfish, 441 U.S. 520, 535–36, 99
13 S.Ct. 1861, 60 L.Ed.2d 447 (1979); Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1017–18
14 (9th Cir.2010); Clouthier v. County of Contra Costa, 591 F.3d 1232, 1244 (9th Cir.2010).
15 Nonetheless, the standard for claims brought under the Eighth Amendment has long been used to
16 analyze pretrial detainees' conditions of confinement claims. Simmons, 609 F.3d at 1017–18;
17 Clouthier, 591 F.3d at 1242; Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir.1998).

18 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an
19 inmate must show “deliberate indifference to serious medical needs.” Jett v. Penner, 439 F.3d
20 1091, 1096 (9th Cir.2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285, 291, 50
21 L.Ed.2d 251 (1976)). The two part test for deliberate indifference requires the plaintiff to show
22 (1) “a ‘serious medical need’ by demonstrating that failure to treat a prisoner's condition could
23 result in further significant injury or the ‘unnecessary and wanton infliction of pain,’” and (2)
24 “the defendant's response to the need was deliberately indifferent.” Jett, 439 F.3d at 1096;
25 Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012).

26 Deliberate indifference is shown where the official is aware of a serious medical need and
27 fails to adequately respond. Simmons, 609 F.3d at 1018. “Deliberate indifference is a high legal
28 standard.” Simmons, 609 F.3d at 1019; Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004).

1 The prison official must be aware of facts from which he could make an inference that “a
2 substantial risk of serious harm exists” and he must make the inference. Farmer, 511 U.S. at 837.

3 Plaintiff’s allegations are sufficient to state a claim against Defendants for deliberate
4 indifference to serious medical needs.

5 **IV. Conclusion and Order**

6 The Court finds that Plaintiff’s complaint states a cognizable claim for deliberate
7 indifference to serious medical needs against Defendants Sweeney, Feely and Jane Doe #1 in
8 their individual capacities. However, the Court finds that Plaintiff fails to state a cognizable
9 claim against Defendants in their official capacities.

10 As Plaintiff was provided with the relevant legal standards and was given an opportunity
11 to file an amended complaint, the Court does not recommend granting further leave to amend.
12 Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

13 Based on the foregoing, it is HEREBY RECOMMENDED that:

14 1. This action proceed on Plaintiff’s first amended complaint, filed on July 7, 2014,
15 against Defendants Sweeney, Feely and Jane Doe #1 in their individual capacities for deliberate
16 indifference to serious medical needs in violation of the Fourteenth Amendment; and

17 2. Plaintiff’s official capacity claims be DISMISSED from this action.

18 These Findings and Recommendations will be submitted to the United States District
19 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
20 fourteen (14) days after being served with these Findings and Recommendations, Plaintiff may
21 file written objections with the Court. The document should be captioned “Objections to
22 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
23 objections within the specified time may waive the right to appeal the District Court’s order.
24 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

25 IT IS SO ORDERED.

26 Dated: October 10, 2014

27 /s/ Barbara A. McAuliffe
28 UNITED STATES MAGISTRATE JUDGE