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5 **UNITED STATES DISTRICT COURT**

6 EASTERN DISTRICT OF CALIFORNIA  
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9 JONATHAN POYNER, ) 1:14-cv-01585-AWI-BAM (PC)  
10 Plaintiff, )  
11 v. ) FINDINGS AND RECOMMENDATIONS  
12 A. M. GONZALES, ) REGARDING DISMISSAL OF  
13 Defendant. ) COMPLAINT FOR FAILURE TO STATE A  
14 ) CLAIM  
15 ) FOURTEEN-DAY DEADLINE  
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16 **Findings and Recommendations**

17 **I. Screening Requirement and Standard**

18 Plaintiff Jonathan Poyner (“Plaintiff”) is a state prisoner proceeding pro se in this civil  
19 rights action pursuant to 42 U.S.C. § 1983. On March 2, 2015, the Court dismissed Plaintiff’s  
20 complaint with leave to amend. Plaintiff’s amended complaint, filed on April 15, 2015, is  
21 currently before the Court for screening.

22 The Court is required to screen complaints brought by prisoners seeking relief against a  
23 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. §  
24 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or  
25 malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary  
26 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28  
27 U.S.C. § 1915(e)(2)(B)(ii).  
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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 Avenal State Prison in Avenal, California. The events in  
20 the complaint are alleged to have occurred while Plaintiff was housed at Corcoran State Prison.  
21 Plaintiff names the following defendants: (1) Correctional Officer F. Espinoza; (2) Correctional  
22 Officer D. Menzie; (3) Correctional Officer G. Vidana; and (4) Correctional Lieutenant A. M.  
23 Gonzales.

### 24 **Claim 1:**

25 In Claim 1, Plaintiff alleges as follows:

26 During a Ninty [sic] (90) day period defendant F. Espinoza was the 3C04 Control  
27 Booth Officer, who failed to provide me with my 1hr of outdoor exercise 5dys per  
28 week. D. Menzie, was working as 3C04 Floor Officer and refuse to allow me my  
1hr of outdoor exercise 5dys per week. G. Vidana, was working as 3C04 Floor

1 Officer, who failed to provide me with my 1hr of outdoor exercise 5dys per week.  
2 A. M. Gonzales, was the Correctional lieutenant who failed to assure that I  
3 received my 1hr of outdoor exercise 5dys per week and all of the aforementioned  
4 defendants were aware of this clear requirement. My outdoor exercise is a right,  
5 not a privilege that can be totally deprived without a showing of safety and  
6 security concerns. While the law does require prison officials to restrict outdoor  
exercise as a result of disciplinary action, such a restriction is limited to the 1hr of  
outdoor exercise 5dys per week. I did not receive 1hr of outdoor exercise for a  
full period of 90dys. As a result, I suffered medical injuries.

7 (ECF No. 9, pp. 3-4).

8 Claim 2:

9 In Claim 2, Plaintiff alleges as follows:

10 Defendants F. Espinoza, D. [Menzie], G. Vidana, and A. M. Gonzales,  
11 dprived [sic] me of a serious medical need as a result of not allowing me outdoor  
12 exercise for a period of Ninty [sic] (90) days. Due to the denial of outdoor  
13 exercise, I was forced to suffer from increased Asthma flare-ups and more than  
14 usual relife [sic] from my rescue inhaler. I am a known Asthmatic to all of the  
15 aforementioned defendants. I personally made each of the defendants aware of  
16 my medical need for outdoor exercise as well as the Facility 3C medical doctor  
Yoon Moon, who informed me that it was an issue with the custody staff. In  
addition, I informed the defendants that I was starting to experience sever [sic]  
muscle cramps in my back znd legas [sic] as a result of a lack of outdoor exercise.  
Their response was, "we don't care."

17 (ECF No. 9, p. 4.)

18 Plaintiff seeks compensatory and punitive damages, along with discovery.

19 **III. Discussion**

20 **A. Eighth Amendment-Cruel and Unusual Punishment**

21 The Eighth Amendment's prohibition against cruel and unusual punishment protects  
22 prisoners from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041,  
23 1045 (9th Cir. 2006). Deprivation of outdoor exercise by prison officials may constitute cruel  
24 and unusual punishment in violation of the Eighth Amendment. Allen v. Sakai, 48 F.3d 1082,  
25 1087 (9th Cir. 1995). As a general rule, prisoners may not be deprived of regular exercise.  
26 Toussaint v. McCarthy, 597 F.Supp. 1388, 1393 (N.D. Cal. 1984), rev'd on other grounds 801  
27 F.2d 1080 (9th Cir. 1986). However, prison officials may restrict outdoor exercise on the basis  
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1 of weather, unusual circumstances or disciplinary needs. See Spain v. Procunier, 600 F.2d 189,  
2 199 (9th Cir. 1979); LeMaire v. Maass, 12 F.3d 1444, 1457-58 (9th Cir. 1993).

3 Here, Plaintiff alleges that he was deprived of outdoor exercise for a period of ninety  
4 days. Unlike his original complaint, Plaintiff omits that the loss of yard privileges was the result  
5 of a disciplinary hearing. However, the action of prison officials in restricting Plaintiff's outdoor  
6 exercise as a result of a disciplinary hearing was not a violation of the Eighth Amendment. See  
7 Spain, 600 F.2d at 199; see also Kennedy v. Hayes, 2010 WL 5440805, \*13 (E.D. Cal. Dec. 28,  
8 2010) (prisoner alleging loss of outdoor exercise for ninety days as a result of a disciplinary  
9 hearing failed to state a claim on Eighth Amendment grounds). Further, there is no indication  
10 that Plaintiff was prevented from exercising inside or outside of his cell or that he was confined  
11 to his cell for a period of ninety days.

#### 12 **B. Eighth Amendment – Deliberate Indifference to Serious Medical Needs**

13 Plaintiff asserts that he developed breathing problems because of the loss of yard  
14 privileges and that he developed muscle cramps. For a deprivation of exercise to rise to the level  
15 of a constitutional violation, there must be evidence that a defendant was deliberately indifferent  
16 to the Plaintiff's needs. See May v. Baldwin, 109 F.3d 557, 565-66 (9th Cir. 1997); Kennedy,  
17 2010 WL 5440805 at \* 13. Here, Plaintiff alleges that defendants were aware of his asthma and  
18 his medical need for outdoor exercise. Nonetheless, Plaintiff's assertion of medical need is  
19 contradicted by allegations in the amended complaint that he spoke with the medical doctor, who  
20 informed Plaintiff it was an issue with custody staff. There is no indication or allegation that the  
21 medical doctor found any medical need for outdoor exercise due to Plaintiff's asthma.

22 Plaintiff also alleges that defendants were deliberately indifferent to his claim of muscle  
23 cramps in his back and legs. As noted above, however, there is no indication that Plaintiff was  
24 precluded from exercising inside or outside of his cell or that he was confined to his cell for a  
25 period of ninety days with no ability to stretch, move or exercise. May, 109 F.3d at 566  
26 (confining an inmate to his cell for less than 24 hours in order to encourage compliance with  
27 prison security regulations does not rise to the level of deliberate indifference).

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Accordingly, it is HEREBY RECOMMENDED that this action be dismissed for failure to state a cognizable section 1983 claim.

IT IS SO ORDERED.

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE