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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUAN CARLOS DE LA CRUZ,
Plaintiff,
v.
UNITED STATES OF AMERICA, et al.,
Defendants.

Case No. 1:15-cv-00545-AWI-SAB (PC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATION AND DISMISSING
CERTAIN CLAIMS AND DEFENDANTS
(ECF Nos. 7, 8)
THIRTY-DAY DEADLINE

I. BACKGROUND

Plaintiff Juan Carlos De La Cruz is a federal prisoner proceeding pro se and in forma pauperis in this civil action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), which provides a remedy for violation of civil rights by federal actors. Plaintiff filed a complaint on April 9, 2015. (ECF No. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 24, 2015, the Magistrate Judge screened the complaint and issued findings and recommendations in which Plaintiff was provided with thirty days in which to file objections. (ECF No. 7.) On July 27, 2015, Plaintiff filed objections to the findings and recommendations. (ECF No. 8.)

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1 **II. DISCUSSION**

2 **A. Plaintiff’s allegations in this action are properly considered under**
3 **Bivens**

4 Plaintiff objects on the ground that the magistrate judge construed the complaint as a
5 *Bivens* action when he brought the action under the Federal Tort Claims Act. Plaintiff’s
6 argument demonstrates a misunderstanding of the law. A cause of action for the violation of a
7 plaintiff’s constitutional or other federal rights by persons acting under color of state law is
8 provided by 42 U.S.C. § 1983. Nurre v. Whitehead, 580 F.3d 1087, 1092 (9th Cir 2009); Long
9 v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); Jones v. Williams, 297 F.3d
10 930, 934 (9th Cir. 2002). In Bivens, the Supreme Court recognized an implied cause of action
11 for damages against federal officers for alleged violation of a citizen’s rights under the Fourth
12 Amendment. 403 U.S. at 397. Following Bivens, the Supreme Court has found a cause of action
13 against federal actors for violations of the Due Process clause of the Fifth Amendment and the
14 Cruel and Unusual Punishment clause of the Eighth Amendment. Correctional Services Corp. v.
15 Malesko, 534 U.S. 61, 67-68 (2001). However, the Court has refused to extend liability for
16 constitutional violations to federal agencies or private corporations operating federal prisons.
17 Malesko, 534 U.S. at 69, 74.

18 Plaintiff’s argument that he can bring his Eighth Amendment claims against Management
19 Training Corporation or its employees is foreclosed by the Supreme Court’s decision in *Malesko*
20 and *Minnecci v. Pollard*, 132 S.Ct. 617 (2012). In *Minnecci*, a federal prisoner attempted to bring
21 claims under the Eighth Amendment for denial of medical care by the private management
22 company operating the federal prison. 132 S.Ct. at 620. The Supreme Court declined to imply a
23 *Bivens* cause of action where “a federal prisoner seeks damages from privately employed
24 personnel working at a privately operated federal prison, where the conduct allegedly amounts to
25 a violation of the Eighth Amendment, and where that conduct is of a kind that typically falls
26 within the scope of traditional state tort law (such as the conduct involving improper medical
27 care at issue here), the prisoner must seek a remedy under state tort law.” Minnecci, 132 S.Ct. at
28 626; see also Valdovinos-Blanco v. Adler, 585 Fed. Appx. 586, 587 (9th Cir. 2014).

1 **B. Plaintiff Fails to State a Claim Under the Federal Tort Claim Act**

2 As stated in the findings and recommendations, the Federal Tort Claim Act provides that
3 the United States is liable for money damages, “for injury or loss of property, or personal injury
4 or death caused by the negligent or wrongful act or omission of any employee of the Government
5 while acting within the scope of his office or employment.” 28 U.S.C.A. § 1346(b)(1). Under
6 the FTCA the only proper party defendant is the United States. Kennedy v. United States Postal
7 Office, 145 F.3d 1077, 1078 (9th Cir. 1998). Plaintiff argues that the Management Training
8 Corporation and all its employees should be considered an employee for purposes of the Federal
9 Tort Claims Act relying on *Ali v Federal Bureau of Prisons*, 552 U.S. 214 (2008). However, *Ali*
10 addresses a federal penitentiary operated by the federal government, not a federal prison which
11 operated by a private corporation under contract with the federal government. Therefore, *Ali*
12 provides no support for Plaintiff’s position.

13 The definition of federal agencies that applies to section 1346 specifically excludes
14 contractors with the United States. 28 U.S.C. § 2671. The Supreme Court addressed the issue of
15 whether the Federal Tort Claims Act provided liability for torts of employees of a county jail
16 under contract to house federal inmates in *Logue v. United States*, 412 U.S. 521 (1973). The
17 Supreme Court held that sections 1346 and 2671 read together included an exemption for
18 liability for injury caused by employees of a contractor. Id. at 528. Accordingly, Plaintiff cannot
19 bring a claim under the Federal Tort Claims Act for injury caused by Management Training
20 Corporation or its employees unless he alleges facts to show that the United States exercised
21 sufficient control over the operations of the private contractor such that the employees could be
22 found to be acting on behalf of the government. Logue, 412 U.S. at 530; see also Autery v.
23 United States, 424 F.3d 944, 956-57 (9th Cir. 2005) (To fall within the FTCA’s limited waiver of
24 sovereign immunity the United States must provide “substantial supervision over the day-to-day
25 operations of the contractor [such that] that the individual was acting as a government
26 employee.”); Will v. United States, 60 F3d 656, 659 (9th Cir. 1995); Letnes v. United States, 820
27 F.2d 1517, 1518-19 (9th Cir. 1987).

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1 **C. Plaintiff’s Medical Claims Do Not Implicate the Due Process Clause**

2 Plaintiff argues that the magistrate judge erred by failing to find a due process claim due
3 to the denial of medical care. Where a particular amendment provides an explicit textual source
4 of constitutional protection against a particular sort of government behavior, that amendment, not
5 the more generalized notion of substantive due process, must be the guide for analyzing a
6 plaintiff’s claims.” Patel v. Penman, 103 F.3d 868, 874 (9th Cir. 1996) overruled on other
7 grounds by Unitherm Food Systems, Inc. v. Swift–Eckrick, Inc., 546 U.S. 394 (2006); County of
8 Sacramento v. Lewis, 523 U.S. 833, 842 (1998).

9 In this case, Plaintiff is alleging that he was denied proper treatment for a serious medical
10 condition. The Eighth Amendment “provides [the] explicit textual source of constitutional
11 protection” Patel, 103 F.3d at 874. Therefore, the Eighth Amendment rather than the Due
12 Process Clause of the Fourteenth Amendment governs Plaintiff’s claims.

13 **D. Plaintiff’s Remaining Arguments Raise Claims Not Supported in**
14 **Complaint**

15 Plaintiff contends that he was denied equal protection and the conduct violated the Alien
16 Tort Statute, 28 U.S.C. § 1350. However, Plaintiff’s complaint contains no allegations to
17 support such violations.

18 The complaint does not allege that any defendant intentionally discriminated against the
19 plaintiff based on his membership in a protected class, Lee v. City of Los Angeles, 250 F.3d 668,
20 686 (2001); Barren v. Harrington, 152 F.3d 1193, 1194 (1998), or that similarly situated
21 individuals were intentionally treated differently without a rational relationship to a legitimate
22 state purpose, Thornton v. City of St. Helens, 425 F.3d 1158, 1167 (2005); Village of
23 Willowbrook v. Olech, 528 U.S. 562, 564 (2000). Plaintiff’s complaint is devoid of any mention
24 of his race or nationality and specifically states that an internal policy has been implemented to
25 save money by denying inmates with chronic medical conditions the ability to be seen by outside
26 medical specialists. (ECF No. 1 at ¶ 8.) Further, Plaintiff alleges that this is an “ongoing
27 systematic and massive denial of health care to the inmate population.” (Id. at ¶ 9.) Plaintiff’s
28 allegations demonstrate that all inmates with serious illness are being treated similarly and

1 therefore no equal protection claim is raised.

2 Similarly, to state a claim for a violation of the Alien Tort Statute requires 1) an alien to
3 sue 2) for a tort 3) committed in violation of a treaty of the United States or the law of nations.
4 28 U.S.C. § 1350; Kadic v. Karadzic, 70 F.3d 232, 238 (2d Cir. 1995). Plaintiff's complaint is
5 devoid of any allegations that he is an alien or that the conduct of the defendants violated the law
6 of nations.

7 **E. Plaintiff Shall Be Granted an Opportunity to File an Amended
8 Complaint**

9 As the magistrate judge recommended, Plaintiff shall be granted the opportunity to file an
10 amended complaint.¹ Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but
11 must state what each named defendant did that led to the deprivation of Plaintiff's constitutional
12 or other federal rights. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "The inquiry into causation
13 must be individualized and focus on the duties and responsibilities of each individual defendant
14 whose acts or omissions are alleged to have caused a constitutional deprivation." Leer v.
15 Murphy, 844 F.2d 628, 633 (9th Cir. 1988). Although accepted as true, the "[f]actual allegations
16 must be [sufficient] to raise a right to relief above the speculative level" Bell Atlantic Corp.
17 v. Twombly, 550 U.S. 544, 555 (2007) (citations omitted).

18 Finally, an amended complaint supersedes the original complaint, Forsyth v. Humana,
19 Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987),
20 and must be "complete in itself without reference to the prior or superseded pleading," Local
21 Rule 220. "All causes of action alleged in an original complaint which are not alleged in an
22 amended complaint are waived." King, 814 F.2d at 567 (citing to London v. Coopers &
Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at 1474.

23 **III. CONCLUSION AND ORDER**

24 Pursuant to 28 U.S.C. § 636(b)(1)(C), the Court has conducted a de novo review of this
25 case. Having carefully reviewed the entire file, the Court finds the findings and
26 recommendations to be supported by the record and by proper analysis.

27 _____
28 ¹ That complaint shall not include an Eighth Amendment Claim against MTC or its employees. MTC and its
employees will be dismissed from this action without leave to amend.

1 Accordingly, it is HEREBY ORDERED that:

- 2 1. The Court adopts the findings and recommendations filed on June 24, 2015 in
3 full;
- 4 2. Plaintiff's complaint, filed April 9, 2015, is DISMISSED for failure to state a claim;
- 5 3. Plaintiff's Eighth Amendment claims are DISMISSED without leave to amend for
6 failure to state a claim;
- 7 4. Defendant Bureau of Prisons is DISMISSED from this action for Plaintiff's failure to
8 state a claim;
- 9 5. Within thirty days from the date of service of this order, Plaintiff shall file an
10 amended complaint to cure the deficiencies identified herein; and
- 11 6. Failure to file an amended complaint in compliance with this order will result in this
12 action being dismissed for failure to prosecute.

13 IT IS SO ORDERED.

14 Dated: August 11, 2015

15 
16 SENIOR DISTRICT JUDGE