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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 RONALD YOUNG

12 Plaintiff,

13 vs.

14 C. SISODIA AND J. KIM,

15 Defendants.
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1:15-cv-00640-LJO-EPG-PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE BE
DISMISSED, WITH PREJUDICE, FOR
PLAINTIFF'S FAILURE TO STATE A
CLAIM UPON WHICH RELIEF MAY BE
GRANTED

OBJECTIONS DUE WITHIN THIRTY
DAYS

18 **I. BACKGROUND**

19 Ronald Young ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis*
20 in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
21 commencing this action on April 27, 2015. (ECF No. 1). The Court screened Plaintiff's
22 complaint on June 24, 2016, finding that it failed to state any claims against any of the
23 Defendants upon which relief may be granted under section 1983, and giving Plaintiff leave to
24 amend. (ECF No. 13) Plaintiff filed a First Amended Complaint ("FAC") on July 21, 2016,
25 which is before this Court for screening.

26 **II. LEGAL STANDARDS FOR SCREENING**

27 The Court is required to screen complaints brought by prisoners seeking relief against a
28 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).

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).

8 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
9 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534
10 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a
11 short and plain statement of the claim showing that the pleader is entitled to relief” Fed. R.
12 Civ. P. 8(a). “Such a statement must simply give the defendant fair notice of what the
13 plaintiff’s claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512.
14 However, “the liberal pleading standard . . . applies only to a plaintiff’s factual allegations.”
15 Neitze v. Williams, 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights
16 complaint may not supply essential elements of the claim that were not initially pled.” Bruns v.
17 Nat’l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of
18 Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

19 **III. ALLEGATIONS IN PLAINTIFF’S FIRST AMENDED COMPLAINT**

20 Plaintiff claims that he suffers from a rash and was denied daily showers needed to care
21 for that rash due to the prison’s shower policy.

22 In November 2012, Plaintiff started noticing a small rash on his hands. He requested a
23 doctor to help treat the rash. Defendant doctors Sisodia and Kim both saw Plaintiff in January
24 2013 and gave him tubes of Fluocinonide ointment to treat the rash. The rash spread.

25 Inmates at the prison housing unit where Plaintiff is located are not allowed to utilize
26 showers unless it is their day room time or if they are returning from work assignments. Day
27 room time is on a rotation of every other day. Sometimes day room time is cancelled if there is
28 an emergency, shortage of staff, power outage, or other security issues. During the period in

1 question, there were several lockdowns and institutional emergencies that resulted in
2 cancellation of shower privileges. As a result, it was impossible for Plaintiff to effectively treat
3 his rash by correctly cleaning himself in a shower.

4 Plaintiff requested an appointment with an off-site dermatologist. On April 16, 2014,
5 Plaintiff saw TeLe Med2U Dermatologist, P. Haines, who recommended that Plaintiff be
6 allowed to take daily showers. Plaintiff forwarded this information to prison staff to request
7 daily showers. He was told that the housing unit medical staff had to issue the order for daily
8 showers. But that medical staff, defendants Sisodia and Kim, failed to give permission for
9 daily showers. They did however continue to order Fluocinonide ointment.

10 Plaintiff's rash is painful and embarrassing because it causes him to need to scratch
11 private areas in front of other inmates.

12 On July 2, 2014, Plaintiff submitted a CDCR-602 medical appeal form for the failure to
13 authorize daily showers. Plaintiff was interviewed at the 3A medical department by Defendant
14 Sisodia regarding the grievance. Defendant Sisodia became very angry and hostile towards
15 Plaintiff for filing the appeal and further indicated that Plaintiff "had nothing come from
16 medical staff including the dermatologist Haines recommended daily showers no matter how
17 severe the rash had gotten."

18 On August 6, 2014, Plaintiff was seen by Dr. Clark at ACH-General Hospital who
19 generated an additional CDCR-7410 medical chrono for Plaintiff to be issued waist restraints,
20 cotton bedding, limited job assignment restrictions due to Plaintiff's limited use of his left arm
21 and inability to climb stairs. When Plaintiff asked Dr. Clark about issuing a daily shower
22 chrono, he said that they had to be issued by 3A facility doctors, who were Defendants Sisodia
23 and Kim.

24 Defendant Kim examined Plaintiff's feet, legs and rectal areas to see where the rash had
25 spread.

26 On October 22, 2014, Plaintiff resubmitted a medical appeal requesting bacterial soap
27 with a daily shower. Doctor Sistodia saw Plaintiff again and gave Plaintiff ibuprofen for the
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1 pain, but Defendant Sisodia refused the daily shower request again. Defendant Kim also
2 reexamined Plaintiff on several different occasions, but refused to authorize daily showers.

3 **IV. DELIBERATE INDIFFERENCE TO SERIOUS MEDICAL NEEDS**

4 The Eighth Amendment of the United States Constitution entitles Plaintiff to medical
5 care and is violated when a prison official acts with deliberate indifference to an inmate's
6 serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012), overruled in part
7 on other grounds, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir. 2014); Wilhelm v.
8 Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir.
9 2006). Plaintiff “must show (1) a serious medical need by demonstrating that failure to treat
10 [his] condition could result in further significant injury or the unnecessary and wanton
11 infliction of pain,” and (2) that “the defendant's response to the need was deliberately
12 indifferent.” Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d 1091, 1096 (9th Cir. 2006)).
13 Deliberate indifference is shown by “(a) a purposeful act or failure to respond to a prisoner's
14 pain or possible medical need, and (b) harm caused by the indifference.” Wilhelm, 680 F.3d at
15 1122 (citing Jett, 439 F.3d at 1096). The requisite state of mind is one of subjective
16 recklessness, which entails more than ordinary lack of due care. Snow, 681 F.3d at 985
17 (citation and quotation marks omitted); Wilhelm, 680 F.3d at 1122.

18 The Court finds that Plaintiff has not stated a claim for deliberate indifference to his
19 serious medical needs because Plaintiff’s allegations do not show that the reason for the failure
20 to provide medical care was to cause harm to the Plaintiff. On the contrary, according to
21 Plaintiff’s own allegations, the reason for failing to provide showers was because of concerns
22 about the function and security of the prison. There is a prison policy for showers, which
23 provides for showers every other day or when returning from work assignments, as described
24 by Plaintiff. Those privileges were cancelled at times because of an emergency or shortage of
25 staff, power outage or any other security issues. Defendant doctors continued to prescribe care
26 to Plaintiff, including ointment and ibpropren, although not with daily showers as
27 recommended. There is no evidence or allegations that they did so with purpose to harm
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1 plaintiff. Rather, the allegations indicate that daily showers were not available due to prison
2 policies and security issues.

3 Although Plaintiff alleges real suffering from the prison policy regarding availability of
4 showers, Plaintiff has not stated a constitutional claim under the law, which requires that the
5 officers deprived medical care base on deliberate indifference or purpose to harm, rather than
6 for a prison security reason. The Court is sympathetic to Plaintiff’s ailments, which sound
7 painful and embarrassing, but does not believe that he has asserted a violation of the
8 Constitution.

9 **V. RETALIATION IN VIOLATION OF THE FIRST AMENDMENT**

10 Prisoners have a First Amendment right to file prison grievances and to pursue civil
11 rights litigation in the courts. *Rhodes v. Robinson*, 408 F.3d 559, 567 (9th Cir. 2004). To state a
12 viable First Amendment retaliation claim in the prison context, a plaintiff must allege: “(1) [a]n
13 assertion that a state actor took some adverse action against an inmate (2) because of (3) that
14 prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First
15 Amendment rights, and (5) the action did not reasonably advance a legitimate correctional
16 goal.” *Id.* at 567-68.

17 Plaintiff alleges that on July 30, 2014, “Defendant Dr. Sisodia became very angry and
18 hostile [sic] towards Plaintiff for filing the appeal” Plaintiff does not allege an adverse
19 action—only an emotional reaction by Defendant Sisodia. Moreover, Plaintiff alleges that he
20 continued to press for care including seeing Dr. Sisodia on August 5, 2014 and “again
21 requested a chrono from Defendant Sisodia due to continued aggravating rash,” and
22 resubmitting an appeal on October 22, 2014 requested a daily shower allowance. This activity
23 does not indicate that Defendant Sisodia’s reaction to one of Plaintiff’s appeals chilled his
24 exercise of his First Amendment rights. Plaintiff thus fails to state a claim for a constitutional
25 violation of the First Amendment based on retaliation.

26 **VI. CONCLUSION AND ORDER**

27 The Court finds that Plaintiff’s First Amended Complaint fails to state any cognizable
28 claim upon which relief may be granted under § 1983. The Court has already screened

1 Plaintiff's initial complaint with substantially similar allegations and found that it failed to state
2 a claim, and has provided Plaintiff guidance on the relevant law to assist his amendment. The
3 Court also that the deficiencies outlined above are not capable of being cured by further
4 amendment, and therefore further leave to amend should not be granted. 28 U.S.C. §
5 1915(e)(2)(B)(ii); Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000).

6 Therefore, **IT IS HEREBY RECOMMENDED** that pursuant to 28 U.S.C. § 1915A
7 and 28 U.S.C. § 1915(e), this action be dismissed with prejudice for failure to state a claim
8 upon which relief may be granted under § 1983, and that this dismissal be subject to the "three-
9 strikes" provision set forth in 28 U.S.C. § 1915(g). Silva v. Vittorio, 658 F.3d 1090, 1098 (9th
10 Cir. 2011).

11 These Findings and Recommendations will be submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
13 **thirty (30) days** after being served with these Findings and Recommendations, Plaintiff may
14 file written objections with the court. The document should be captioned "Objections to
15 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
16 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
17 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
18 (9th Cir. 1991)).

19
20 IT IS SO ORDERED.

21 Dated: September 14, 2016

22 /s/ Eric P. Grogan
23 UNITED STATES MAGISTRATE JUDGE
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