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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LATONIA JONES,
Plaintiff,
v.
FRESNO COUNTY JAIL,
Defendant.

CASE No. 1:16-cv-00132-MJS (PC)
**ORDER DISMISSING ACTION WITH
PREJUDICE FOR FAILURE TO STATE A
CLAIM**
(ECF No. 10)
**DISMISSAL COUNTS AS A STRIKE
PURSUANT TO 28 U.S.C. § 1915(g)**
**CLERK TO TERMINATE ALL PENDING
MOTIONS AND CLOSE CASE**

Plaintiff is a County Jail inmate proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. (ECF Nos. 1 & 4.) She has consented to Magistrate Judge jurisdiction. (ECF No. 5.) No other parties have appeared in the action.

Plaintiff's complaint was dismissed for failure to state a claim, and she was given leave to amend. (ECF No. 6.) Her first amended complaint is before the Court for screening.

1 **I. SCREENING REQUIREMENT**

2 The Court is required to screen complaints brought by prisoners seeking relief
3 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
4 § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has
5 raised claims that are legally “frivolous, malicious,” or that fail to state a claim upon which
6 relief may be granted, or that seek monetary relief from a defendant who is immune from
7 such relief. 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee, or any portion
8 thereof, that may have been paid, the court shall dismiss the case at any time if the court
9 determines that . . . the action or appeal . . . fails to state a claim upon which relief may
10 be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

11 **II. PLEADING STANDARD**

12 Section 1983 “provides a cause of action for the deprivation of any rights,
13 privileges, or immunities secured by the Constitution and laws of the United States.”
14 Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).
15 Section 1983 is not itself a source of substantive rights, but merely provides a method for
16 vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94
17 (1989).

18 To state a claim under § 1983, a plaintiff must allege two essential elements:
19 (1) that a right secured by the Constitution or laws of the United States was violated and
20 (2) that the alleged violation was committed by a person acting under the color of state
21 law. See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d
22 1243, 1245 (9th Cir. 1987).

23 A complaint must contain “a short and plain statement of the claim showing that
24 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
25 are not required, but “[t]hreadbare recitals of the elements of a cause of action,
26 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.
27 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).
28 Plaintiff must set forth “sufficient factual matter, accepted as true, to state a claim to relief

1 that is plausible on its face.” Id. Facial plausibility demands more than the mere
2 possibility that a defendant committed misconduct and, while factual allegations are
3 accepted as true, legal conclusions are not. Id. at 677-78.

4 **III. PLAINTIFF’S ALLEGATIONS**

5 Plaintiff is an inmate serving a four year term at the Fresno County Jail. She
6 names as defendants (1) the Fresno County Jail Administration Staff, (2) the Sheriff’s
7 Department, and (3) Sheriff Mims.

8 Aside from the inclusion of additional defendants, Plaintiff’s allegations are
9 repeated verbatim from her first amended complaint and may be summarized essentially
10 as follows.

11 There is mildew, black mold, and rust in the shower and living area of the jail.
12 According to Plaintiff, the jail is 100 years old and has been condemned three times. The
13 Sheriff’s Department knows that the conditions in the jail are unsafe and unhealthy but
14 continues to house inmates there. As a result of the living conditions, Plaintiff has black
15 and red spots all over her body. Medical staff has been unable to identify the spots and
16 has referred Plaintiff to a specialist. Plaintiff must undergo breathing treatments three to
17 six times per month. She uses an inhaler twice a day and has high blood pressure.

18 Plaintiff alleges that these conditions violate her Eighth Amendment right to be
19 free from cruel and unusual punishment. She seeks “medical help,” money damages,
20 and to be moved to a different jail facility.

21 **IV. ANALYSIS**

22 The Cruel and Unusual Punishments Clause of the Eighth Amendment protects
23 prisoners from inhumane conditions of confinement. Farmer v. Brennan, 511 U.S. 825,
24 832 (1994); Bell v. Wolfish, 441 U.S. 520, 535 (1979); Graham v. Connor, 490 U.S. 386,
25 395 n.10 (1989). Under the Eighth Amendment, a conditions of confinement claim has
26 both an objective and a subjective component. See Farmer, 511 U.S. at 834. “First, the
27 deprivation alleged must be . . . sufficiently serious,” and must “result in the denial of the
28 minimal civilized measure of life’s necessities.” Id. “[E]xtreme deprivations are required

1 to make out a conditions-of-confinement claim.” Hudson, 503 U.S. at 9. Second, the
2 prison official must have acted with “deliberate indifference” to a substantial risk of
3 serious harm to the inmate. Farmer, 511 U.S. at 834. “Mere negligence is not sufficient
4 to establish liability.” Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998). Rather, a
5 plaintiff must set forth facts to show that a defendant knew of, but disregarded, an
6 excessive risk to inmate health or safety. Farmer, 511 U.S. at 837. That is, “the official
7 must both be aware of facts from which the inference could be drawn that a substantial
8 risk of serious harm exists, and he must also draw the inference.” Id.

9 In order to proceed against the Jail or the Sheriff’s Department on allegations of
10 cruel and unusual punishment, Plaintiff must allege that “a deliberate policy, custom, or
11 practice . . . was the ‘moving force’ behind the constitutional violation . . . suffered.”
12 Galen v. County of Los Angeles, 477 F.3d 652, 667 (9th Cir. 2007); City of Canton, Ohio,
13 v. Harris, 489 U.S. 378, 385 (1989). Under this route, the plaintiff must satisfy traditional
14 § 1983 requirements and show that “the municipality acted with ‘the state of mind
15 required to prove the underlying violation.’” Gibson v. County of Washoe, 290 F.3d 1175,
16 1187 (2002) (quoting Board of Cnty. Comm'rs of Bryan Cnty. v. Brown, 520 U.S. 404
17 (1994)). Here, that standard is deliberate indifference. See Farmer v. Brennan, 511 U.S.
18 825, 834 (1994).

19 Alternatively, municipal liability may be imposed where the local government unit’s
20 omission led to the constitutional violation by its employee. Gibson, 290 F.3d at 1186.
21 Under this route to municipal liability, the “plaintiff must show that the municipality’s
22 deliberate indifference led to its omission and that the omission caused the employee to
23 commit the constitutional violation.” Id. This kind of deliberate indifference is found when
24 the need to remedy the omission is so obvious, and the failure to act so likely to result in
25 the violation of rights, that the municipality reasonably can be said to have been
26 deliberately indifferent when it failed to act. Id. at 1195.

27 Plaintiff’s allegation that she is housed in an area with unsanitary conditions that
28 have affected her health is a sufficiently serious deprivation to state a conditions of

1 confinement claim. The Ninth Circuit has determined that “subjection of a prisoner to lack
2 of sanitation that is severe or prolonged can constitute an infliction of pain within the
3 meaning of the Eighth Amendment.” Anderson v. Cnty. of Kern, 45 F.3d 1310, 1314 (9th
4 Cir. 1995) (holding an inmate must demonstrate that the sanitary limitations imposed on
5 him or her were more than temporary), opinion amended on denial of reh'g, 75 F.3d 448
6 (9th Cir.1995).

7 However, Plaintiff fails to allege deliberate indifference. Although Plaintiff now
8 names Sheriff Mims and unspecified Jail “Administration Staff” as defendants, she does
9 not allege any facts regarding these defendants. She therefore has not pled that any
10 particular person knew of, but disregarded, a substantial risk to her health or safety
11 caused by the unsanitary conditions. And, Plaintiff’s claims against the Fresno County
12 Jail and Fresno County Sheriff’s Department fail for the reasons stated in the Court’s
13 prior screening order. Plaintiff appears to allege that the Jail and/or Sheriff’s Department
14 has a policy of housing female inmates at a particular institution. However, she has not
15 alleged facts to show that municipal policy makers know that this policy will expose
16 inmates to unconstitutional conditions of confinement. Plaintiff’s conclusory allegation
17 that the Sheriff’s Department knows that the conditions are unsafe and unhealthy is
18 insufficient, as is Plaintiff’s allegation that the jail at one time was condemned.

19 Plaintiff twice has been advised of these legal standards and of the deficiencies in
20 her complaints but has failed to cure them. Further leave to amend would be futile and
21 will be denied.

22 **V. CONCLUSION AND ORDER**

23 Plaintiff’s second amended complaint fails to state a cognizable claim. She
24 previously was advised of pleading deficiencies and afforded the opportunity to correct
25 them. She failed to do so. Any further leave to amend reasonably appears futile and will
26 be denied.

27 Accordingly, it is HEREBY ORDERED that:

- 28 1. The action is DISMISSED with prejudice for failure to state a claim;

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2. Dismissal counts as a strike pursuant to the “three strikes” provision set forth in 28 U.S.C. § 1915(g); and
3. The Clerk of the Court shall terminate all pending motions and close the case.

IT IS SO ORDERED.

Dated: April 13, 2016

1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE