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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

RICKY L. BLAND,  
  
  Plaintiff,  
  
                    v.  
  
M.D. BITER, et al.,  
  
  Defendants.

Case No. 1:16-cv-00933-DAD-BAM (PC)  
  
FINDINGS AND RECOMMENDATIONS TO  
DISMISS ACTION, WITH PREJUDICE, FOR  
FAILURE TO STATE A CLAIM  
  
(ECF No. 27)  
  
**FOURTEEN (14) DAY DEADLINE**

**Findings and Recommendations**

Plaintiff Ricky L. Bland (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. On October 6, 2017, the Court issued a screening order dismissing Plaintiff’s first amended complaint with leave to amend within thirty (30) days. (ECF No. 20.) Plaintiff’s second amended complaint, filed on February 15, 2018, is currently before the Court for screening. (ECF No. 27.)

**A. Screening Requirement**

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

1 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary  
2 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C.  
3 § 1915(e)(2)(B)(ii).

4 A complaint must contain “a short and plain statement of the claim showing that the  
5 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
6 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
7 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
8 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken as  
9 true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc.,  
10 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

11 To survive screening, Plaintiff’s claims must be facially plausible, which requires  
12 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable  
13 for the misconduct alleged. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss v. U.S.  
14 Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted  
15 unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the  
16 plausibility standard. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss, 572 F.3d at 969.

17 **B. Plaintiff’s Allegations**

18 Plaintiff is currently housed at Ironwood State Prison in Blythe, California. The events in  
19 the complaint are alleged to have occurred while Plaintiff was housed at Kern Valley State Prison  
20 (“KVSP”) in Delano, California. Plaintiff seeks compensatory and punitive damages against  
21 defendants, Dr. C. Ogbuehi and Dr. M. Spaeth.

22 In Claim 1, Plaintiff alleges as follows:

23 On 8-4-2015 I was seen by Dr. Ogbuehi, C so that I could renew my diabetic  
24 supplies for my glucometer. I also have lower back pain hi and shoulder pain.  
25 And had medication for it that needed to be renewed[.] After reviewing my case,  
26 Dr. Ogbuehi, C stated that nothing is wrong with you and cancelled all plaintiff  
27 medication. Glucometer mobility vest cane plaintiff CDCR 7410 and 1845 Form.  
28 He did this without conducting any test to determine if I needed medication. I  
have sence [sic] been put back on all my medication. Dr. Ogbuehi, C put my  
health in serious danger when he cancelled my meds without issuing a 1856 Form  
explaining his action.

1 (ECF No. 27 at pp. 3-4.)

2 In Claim 2, Plaintiff alleges as follows:

3 Around August 2015 I saw Chief Medical Officer Dr Spaeth. M she called me to  
4 CTC and told me that a lawyer had contacted her from the state and said Dr  
5 Ogbuehi, C. did sign the 1845 Form as to why he chang[ed] my previous diagnosis  
6 and that the lawyer asked if I would accept \$25,000.00 for this mistake I just need  
7 you to sign off on this CDCR 602. I refused Dr. Spaeth lied in order to deny me due  
8 process

7 (ECF No. 27 at p. 4.)

8 Plaintiff forwards claims for violation of his Sixth and Eighth Amendment rights.

9 **C. Discussion**

10 Plaintiff's second amended complaint fails to comply with Federal Rule of Civil  
11 Procedure 8 and fails to state a cognizable claim for relief.

12 **1. Pleading Standards**

13 **a. Federal Rule of Civil Procedure 8**

14 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain "a short and plain  
15 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a).  
16 Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause  
17 of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678  
18 (citation omitted). Plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a  
19 claim to relief that is plausible on its face.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S.  
20 at 570). While factual allegations are accepted as true, legal conclusions are not. Id.; see also  
21 Twombly, 550 U.S. at 556–57.

22 Here, Plaintiff's complaint is short, but is not a plain statement of his claims. Plaintiff  
23 omits sufficient factual matter necessary to state a claim for relief. Despite being notified of the  
24 relevant pleading standard, Plaintiff has been unable to cure this deficiency.

25 **2. Legal Standards**

26 **a. Eighth Amendment – Deliberate Indifference**

27 "[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate  
28 must show 'deliberate indifference to serious medical needs.'" Jett v. Penner, 439 F.3d 1091,

1 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). The two part test for  
2 deliberate indifference requires the plaintiff to show (1) “a ‘serious medical need’ by  
3 demonstrating that failure to treat a prisoner’s condition could result in further significant injury  
4 or the ‘unnecessary and wanton infliction of pain,’” and (2) “the defendant’s response to the need  
5 was deliberately indifferent.” Jett, 439 F.3d at 1096.

6 Deliberate indifference is shown where the official is aware of a serious medical need and  
7 fails to adequately respond. Simmons, 609 F.3d at 1018. “Deliberate indifference is a high legal  
8 standard.” Simmons, 609 F.3d at 1019; Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004).  
9 The prison official must be aware of facts from which he could make an inference that “a  
10 substantial risk of serious harm exists” and he must make the inference. Farmer v. Brennan, 511  
11 U.S. 825, 837 (1994).

12 Plaintiff’s allegations against Defendant Ogbuehi are insufficient to state a claim for  
13 deliberate indifference to serious medical needs. Plaintiff merely complains of a difference of  
14 opinion and to the extent Plaintiff disagrees with the diagnoses and treatment decisions of Dr.  
15 Ogbuehi, a “difference of opinion between a prisoner-patient and prison medical authorities  
16 regarding treatment does not give rise to a [section] 1983 claim.” Franklin v. State of Or., State  
17 Welf. Div., 662 F.2d 1337, 1344 (9th Cir. 1981). To state a claim under these conditions requires  
18 the plaintiff to “show that the course of treatment the doctors chose was medically unacceptable  
19 under the circumstances, . . . and . . . they chose this course in conscious disregard of an excessive  
20 risk to plaintiff’s health.” Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996). Plaintiff fails  
21 to set forth sufficient factual allegations to establish that the course of treatment chosen by Dr.  
22 Ogbuehi was medically unacceptable under the circumstances. Plaintiff’s conclusory allegations  
23 of deliberate indifference are not sufficient. However, even if Dr. Ogbuehi improperly cancelled  
24 Plaintiff’s medications, there is no indication from Plaintiff’s second amended complaint that he  
25 suffered any harm from the temporary cancellation. Plaintiff admits that his medications were  
26 restored.

27 Plaintiff’s allegations against Defendant Spaeth also are insufficient to state a claim for  
28 deliberate indifference to serious medical needs. There is no indication that Defendant Spaeth

1 either provided or denied Plaintiff any medical treatment or medications. Instead, Plaintiff's  
2 allegations suggest that Defendant Spaeth was merely relaying information from an attorney.

3 To the extent that Plaintiff is attempting to impose liability against Defendant Spaeth  
4 based on her supervisory position as Chief Medical Officer, he may not do so. Liability may not  
5 be imposed on supervisory personnel for the actions or omissions of their subordinates under the  
6 theory of respondeat superior. Iqbal, 556 U.S. at 676–77; Simmons v. Navajo Cty., Ariz., 609  
7 F.3d 1011, 1020–21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir.  
8 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). “A supervisor may be liable only if  
9 (1) he or she is personally involved in the constitutional deprivation, or (2) there is a sufficient  
10 causal connection between the supervisor’s wrongful conduct and the constitutional violation.”  
11 Crowley v. Bannister, 734 F.3d 967, 977 (9th Cir. 2013) (citation and quotation marks omitted);  
12 accord Lemire v. Cal. Dep’t of Corr. & Rehab., 726 F.3d 1062, 1074–75 (9th Cir. 2013); Lacey v.  
13 Maricopa Cty., 693 F.3d 896, 915–16 (9th Cir. 2012) (en banc). “Under the latter theory,  
14 supervisory liability exists even without overt personal participation in the offensive act if  
15 supervisory officials implement a policy so deficient that the policy itself is a repudiation of  
16 constitutional rights and is the moving force of a constitutional violation.” Crowley, 734 F.3d at  
17 977 (citing Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989)) (internal quotation marks  
18 omitted).

19 Plaintiff does not allege that Defendant Spaeth was personally involved in the temporary  
20 cessation of Plaintiff’s medication by Defendant Ogbuehi. Although Plaintiff’s complaint  
21 suggests that Defendant Spaeth learned of Defendant Ogbuehi’s alleged decision to cease  
22 Plaintiff’s medications, there is no indication that Defendant Spaeth failed to take any action to  
23 restore Plaintiff’s medications or that she even learned of the alleged denial before the  
24 medications were resumed. Further, Plaintiff fails to identify any policy sufficient to impose  
25 liability against any supervisory defendant.

26 **b. Sixth Amendment**

27 The nature of Plaintiff’s claim for violation of the Sixth Amendment is unclear.  
28 Regardless, the Sixth Amendment only guarantees an accused certain rights related to a criminal

1 prosecution. U.S. Const. Amend. VI; see Wilson v. Beard, No. 2:15-CV-01481-AC P, 2017 WL  
2 1650631, at \*3 (E.D. Cal. May 2, 2017) (Sixth Amendment inapplicable to prisoner suits based  
3 on conditions of confinement). Plaintiff's allegations concerning his medications do not implicate  
4 the Sixth Amendment.

5 **D. Conclusion and Recommendation**

6 Plaintiff's second complaint fails to state a cognizable claim for relief.  
7 Despite being provided with the relevant legal and pleading standards, along with multiple  
8 opportunities to amend, Plaintiff has been unable to cure the deficiencies in his complaint, and  
9 thus further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir.  
10 2000). Accordingly, the Court HEREBY RECOMMENDS that Plaintiff's complaint be  
11 dismissed for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. §§  
12 1915(e) and 1915A.

13 These Findings and Recommendation will be submitted to the United States District Judge  
14 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen  
15 (14) days after being served with these Findings and Recommendation, Plaintiff may file written  
16 objections with the Court. The document should be captioned "Objections to Magistrate Judge's  
17 Findings and Recommendation." Plaintiff is advised that failure to file objections within the  
18 specified time may result in the waiver of the "right to challenge the magistrate's factual  
19 findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.  
20 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21  
22 IT IS SO ORDERED.

23 Dated: March 13, 2018

24 /s/ Barbara A. McAuliffe  
25 UNITED STATES MAGISTRATE JUDGE  
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