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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 GUILLERMO G. PAEZ, JR.,

12 Plaintiff,

13 v.

14 COMMUNITY REGIONAL MEDICAL  
15 CENTER, et al.,

16 Defendants.

Case No. 1:17-cv-00215-LJO-SAB (PC)

ORDER ADOPTING IN PART FINDINGS  
AND RECOMMENDATIONS AND  
DISMISSING ACTION FOR FAILURE TO  
STATE A CLAIM

(ECF Nos. 11, 12)

17 Plaintiff Guillermo G. Paez, Jr., is appearing pro se and in forma pauperis in this civil  
18 rights action pursuant to 42 U.S.C. § 1983. On April 4, 2017, Plaintiff filed a second amended  
19 complaint that was referred to a United States Magistrate Judge pursuant to 28 U.S.C. §  
20 636(b)(1)(B) and Local Rule 302.

21 On April 11, 2017, the Magistrate Judge filed findings and recommendations (F&Rs),  
22 recommending dismissing the action for failure to state a claim. The F&Rs were served on  
23 Plaintiff and contained notice that any objections to the findings and recommendations were to  
24 be filed within thirty days from the date of service. The period for filing objections has passed  
25 and no objections have been filed.

26 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted  
27 a de novo review of this case. Having carefully reviewed the entire file, the Court finds the  
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1 findings and recommendations largely to be supported by the record and by proper analysis. The  
2 Court adds the following observations about additional deficiencies in Plaintiff's second  
3 amended complaint to guide him in any future amendment.

4         The Eighth Amendment demands, among other things, that prison officials not act in a  
5 manner "sufficiently harmful to evidence deliberate indifference to serious medical needs."  
6 *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). An Eighth Amendment claim based on inadequate  
7 medical care has two elements: "the seriousness of the prisoner's medical need and the nature of  
8 the defendant's response to that need." *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir.1992).  
9 A medical need is "serious" "if the failure to treat the prisoner's condition could result in further  
10 significant injury or the 'unnecessary and wanton infliction of pain.'" *Id.* (quoting *Estelle*, 429  
11 U.S. at 104). "Mere negligence in diagnosing or treating a medical condition, without more, does  
12 not violate a prisoner's Eighth Amendment rights." *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th  
13 Cir. 1992).

14         Although Plaintiff has now alleged that he received some form of medical care after he  
15 was taken into custody, Plaintiff has failed to allege how any Defendant who cared for him after  
16 he was taken into custody acted with deliberate indifference. At best, Plaintiff's claims amount to  
17 medical negligence, which is insufficient.

18         Further, to state a claim for relief under § 1983, Plaintiffs must link each named  
19 Defendant with some affirmative act or omission that demonstrates a violation of Plaintiff's  
20 federal rights. Plaintiff must specify which Defendant(s) is allegedly responsible for each  
21 violation of his constitutional rights and the factual basis of his Complaint must put each  
22 Defendant on notice of Plaintiff's claims against him. *See Austin v. Terhune*, 367 F.3d 1167,  
23 1171 (9th Cir. 2004). In sum, Plaintiff must allege with specific facts who did what, when, and  
24 how it violated his Eighth Amendment rights.

25         In addition, Plaintiff attempts to impose liability on the unknown Chief Medical Officer  
26 for failing to supervise his/her subordinates adequately. Section 1983 does not permit this form  
27 of supervisory liability. *See Ashcroft v. Iqbal*, 556 U.S. 662, 673 (2009).

28         Finally, the Court agrees that amendment would be futile as to any events that took place

1 prior to the date on which Plaintiff was taken into custody, as the Eighth Amendment does not apply  
2 under such circumstances. However, Plaintiff will be afforded one more opportunity to amend his  
3 complaint with respect to events that took place after he was taken into custody. Plaintiff is warned  
4 that any such allegations must comport with the guidance provided in the F&Rs and in this Order and  
5 that he will not be afforded any further opportunities to amend his complaint.

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. The findings and recommendations, filed April 11, 2017, is ADOPTED IN  
8 PART;
- 9 2. Plaintiff's Second Amended Complaint is DISMISSED for failure to state a  
10 cognizable claim for relief; and
- 11 3. Within thirty days of service of this order, Plaintiff shall file a third amended  
12 complaint. If Plaintiff fails to meet this deadline, this case will be dismissed with  
13 prejudice.

14 IT IS SO ORDERED.

15 Dated: May 24, 2017

16 /s/ Lawrence J. O'Neill  
17 UNITED STATES CHIEF DISTRICT JUDGE