

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARL JOHNSON,  
Plaintiff,  
v.  
J. SCALIA, A. FRITZ,  
B. HACKWORTH, J. CAMPOS,  
A. ARANDA, and DOES 1-4,  
Defendants.

Case No. 1:18-cv-00061-JDP  
SCREENING ORDER  
(Doc. Nos. 1, 3)  
FINDINGS AND RECOMMENDATIONS  
ON SCREENING  
ORDER DIRECTING CLERK OF COURT  
TO AMEND CASE CAPTION

Plaintiff Carl Johnson is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action brought under 42 U.S.C. § 1983. The undersigned has screened plaintiff's complaint under 28 U.S.C. § 1915A and finds that plaintiff has stated two sets of cognizable claims under the Eighth Amendment:

1. claims against defendants J. Scalia, A. Fritz, B. Hackworth, A. Aranda, J. Campos, and two Doe defendants for unsanitary conditions that resulted in plaintiff's severe abdominal pain that lasted for weeks; and
2. claims against two nurse Doe defendants for delaying medical treatment for plaintiff's abdominal pain.

The undersigned recommends that the court dismiss plaintiff's remaining claims without prejudice and allow him the opportunity to amend the complaint.

1     **I.     SCREENING AND PLEADING REQUIREMENTS**

2             A district court is required to screen a prisoner’s complaint seeking relief against a  
3 governmental entity, its officer, or its employee. *See* 28 U.S.C. § 1915A(a). The court must  
4 identify any cognizable claims and dismiss any portion of a complaint that is frivolous or  
5 malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a  
6 defendant who is immune from such relief. *See* 28 U.S.C. §§ 1915A(b)(1), (2).

7             A complaint must contain a short and plain statement that plaintiff is entitled to relief,  
8 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its  
9 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not  
10 require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S.  
11 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere  
12 possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not  
13 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024,  
14 1038 (9th Cir. 2016) (quoting *Skinner v. Switzer*, 562 U.S. 521, 530 (2011)). Instead, what  
15 plaintiff must state is a “claim”—a set of “allegations that give rise to an enforceable right to  
16 relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc)  
17 (citations omitted).

18             The court must construe a pro se litigant’s complaint liberally. *See Haines v. Kerner*, 404  
19 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint only “if it  
20 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which  
21 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017)  
22 (quoting *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014)).

23     **II.     COMPLAINT**

24             The undersigned draws the following facts from plaintiff’s verified complaint  
25 (Doc. No. 1) and its exhibits (Doc. No. 3) and accepts them as true for purposes of screening.  
26 Plaintiff is incarcerated at California State Prison, Corcoran (“COR”). Defendants J. Scalia,  
27 B. Hackworth, A. Fritz, J. Campos, and A. Aranda are correctional officers at COR. The Doe  
28 defendants 1 through 4 are COR employees whose names are unknown. Two of the Doe

1 defendants distributed plaintiff’s meals; the other two are nurses.<sup>1</sup> Plaintiff challenges three  
2 aspects of his conditions of confinement at COR: (1) distribution of meals in unsanitary  
3 conditions that resulted in plaintiff’s severe abdominal pain; (2) delay of medical treatment for his  
4 abdominal pain caused by the unsanitary conditions; and (3) cold meals.

5 **A. Distributing inmate meals in unsanitary conditions**

6 Plaintiff alleges that defendants Scalia, Fritz, Hackworth, and two Doe defendants  
7 distributed inmates’ meals in unsanitary conditions from July to August 2016. (Doc. No. 1,  
8 ¶¶ 16-21, 28-32.) According to plaintiff, these defendants distributed inmates’ meals near  
9 laundry that had been soiled, soaked with urine or sewage water, or allowed to contact rodents.  
10 (*Id.* ¶ 16.) The same defendants allegedly distributed meals wearing unsanitary gloves and  
11 without hair nets. (*Id.* ¶¶ 17, 21.) After inmates finished eating, the defendants allegedly  
12 gathered the plastic racks from which they served inmates’ meals into a pile by kicking or  
13 dragging the plastic racks across the floor. (*Id.* ¶¶ 18-19.) Plaintiff alleges that the floor was  
14 contaminated with dirt, dust, and puddles of sewage water from leaking pipes. (*Id.* ¶ 19.)  
15 According to plaintiff, defendants “never once put[] the plastic racks through any type of safe  
16 cleaning and sanitiz[ing] process.” (*Id.*)

17 When plaintiff complained to defendants, they allegedly refused to address the unsanitary  
18 conditions. (*Id.* ¶ 24; *see also id.* ¶¶ 25, 27.) Defendant Scalia is alleged to have responded to  
19 plaintiff’s complaints by stating:

20 This [is] our daily routine[.] We’re not going to stop what we do  
21 just because you came here[,] and you do have a choice not to eat.  
This is prison[,] not the Holiday Inn.

22 (*Id.* ¶ 24.) Defendant Campos, who was the unit officer in charge of the floor where plaintiff’s  
23 meals were distributed, allegedly allowed the unsanitary conditions to continue. Defendant  
24 Aranda, a sergeant, allegedly responded to complaints about the food by stating, “I will speak  
25 with my staff about this issue”—but the unsanitary practices allegedly continued after this  
26

---

27 <sup>1</sup> Plaintiff alleges that there are four Doe defendants (Doc. No. 1, ¶ 11), but at times he appears to  
28 suggest that there are only three (*see id.* ¶¶ 39-41). At this stage, the court will accept plaintiff’s  
allegation that there are four Doe defendants.

1 statement. (*Id.* ¶ 30; *see also id.* ¶¶ 28-32.) On August 10, 2016, plaintiff allegedly began  
2 experiencing severe abdominal pain and nausea. (*Id.* ¶ 33.)

3 **B. Failure to provide medical treatment**

4 When plaintiff became ill on August 10, 2016, he yelled from his cell door in an attempt  
5 to contact one of the six defendants responsible for unsanitary conditions—defendants Scalia,  
6 Fritz, Hackworth, Campos, and two Doe defendants—but none responded. (*Id.* ¶ 34.) Plaintiff  
7 alleges:

8 As Plaintiff attempted to inform one of the Defendants about  
9 physical illness as well as seek Medical attention, leaving Plaintiff  
10 to suffer in pain while the Defendants just walked past the  
11 Plaintiff’s Cell Door and ignored Plaintiff or either sat downstairs at  
12 the Table an[d] watched T.V., or Text[ed] on their personal Cell  
13 Phones, etc.

14 (*Id.*) The undersigned understands that plaintiff is alleging that at least one or more of the six  
15 defendants walked past plaintiff’s cell and ignored his requests for assistance.

16 Plaintiff alleges that he informed two nurses—the other two Doe defendants—about his  
17 medical condition. The first nurse allegedly told him to submit a health-care request form to see a  
18 registered nurse. Plaintiff submitted such a form to another nurse and informed that nurse of his  
19 symptoms; the second nurse told plaintiff that he would be “scheduled to [be] called in[,] leaving  
20 Plaintiff to suffer in Pain.” (*Id.* ¶ 36.)

21 Plaintiff alleges that he received no medical treatment for his severe abdominal pain for  
22 the remainder of his confinement at COR, which lasted 15 days—from August 10 through August  
23 25, 2016. He claims that he received medical treatment only when he was transferred to a new  
24 facility, the Mule Creek State Prison.  
25  
26  
27  
28

1           **C. Cold food**

2           Plaintiff alleges that he received cold food. (*Id.* ¶ 15.) Plaintiff alleges that defendants  
3           Scalia, Fritz, Hackworth, and the two Doe defendants who distributed plaintiff’s meals failed to  
4           keep his meals above 135 degrees Fahrenheit as required under California Health and Safety  
5           Code Section 113996(a). That regulation provides:

6                           Except during preparation, cooking, cooling, transportation to or  
7                           from a retail food facility for a period of less than 30 minutes, or  
8                           when time is used as the public health control as specified under  
9                           Section 114000, or as otherwise provided in this section, *potentially  
                          hazardous food* shall be maintained at or above 135°F, or at or  
                          below 41°F.

10          Cal. Health & Safety Code § 113996(a) (emphasis added). Plaintiff alleges that the five  
11          defendants failed to plug a food cart’s electric cord to a power outlet to keep his meals above 135  
12          degrees Fahrenheit. (Doc. No. 1, ¶ 15.) He does not allege that his meals included any  
13          potentially hazardous food.

14          **III. DISCUSSION**

15          Section 1983 allows a private citizen to sue for the deprivation of a right secured by  
16          federal law. *See* 42 U.S.C. § 1983; *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 916 (2017). To  
17          state a claim under Section 1983, a plaintiff must allege that a defendant, while acting under color  
18          of state law, personally participated in the deprivation of a right secured by federal law. *See Soo  
19          Park v. Thompson*, 851 F.3d 910, 918 (9th Cir. 2017).

20          Here, all defendants are state prison employees who—accepting plaintiff’s allegations as  
21          true—can be inferred to have acted under color of state law. *See Paeste v. Gov’t of Guam*, 798  
22          F.3d 1228, 1238 (9th Cir. 2015) (“[G]enerally, a public employee acts under color of state law  
23          while acting in his official capacity or while exercising his responsibilities pursuant to state law.”  
24          (quoting *West v. Atkins*, 487 U.S. 42, 50 (1988))). Likewise, plaintiff plausibly alleges that each  
25          defendant personally participated in the alleged deprivations. He alleges that defendants Scalia,  
26          Fritz, Hackworth, Campos, and two Doe defendants personally distributed his meals or ignored  
27          his requests for medical attention, and that the other two Doe defendants—the nurses—personally  
28

1 participated in causing a delay of medical treatment. He alleges that defendant Aranda, a sergeant  
2 who learned about the unsanitary conditions and agreed to look into plaintiff's claims, did not  
3 correct the conditions. The allegations support the inference that defendant Aranda turned a blind  
4 eye to the alleged wrongdoing; given Aranda's position as a supervisor, his alleged disregard of  
5 the unsanitary conditions satisfies the personal participation requirement. *See King v. Cty. of Los*  
6 *Angeles*, 885 F.3d 548, 559 (9th Cir. 2018) (reasoning that supervisor's knowledge of and refusal  
7 to terminate acts by subordinates satisfy personal participation requirement). The remaining  
8 question is whether defendants' alleged actions violated federal law.

9 **A. Unsanitary conditions**

10 Inhumane conditions of confinement can violate the Eighth Amendment's prohibition  
11 against cruel and unusual punishment. *See Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir.  
12 2006). Inhumane conditions can take many forms, and the deprivation of "minimal civilized  
13 measure of life's necessities" such as adequate food, clothing, shelter, medical care, or safety can  
14 violate the Eighth Amendment. *Id.* at 834; *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984). The  
15 deliberate-indifference standard of *Farmer v. Brennan*, 511 U.S. 825 (1994), applies to claims  
16 under the Eighth Amendment challenging prison conditions. *See Anderson v. Cty. of Kern*, 45  
17 F.3d 1310, 1312 (9th Cir. 1995). Under this standard, a defendant violates the Eighth  
18 Amendment when two requirements are satisfied: (1) the alleged deprivation is objectively  
19 serious; and (2) the defendant is deliberately indifferent to the deprivation. *See Farmer*, 511 U.S.  
20 825, 834 (1994).

21 As for the first requirement, the deprivation at issue must pose a "substantial risk of  
22 serious harm" to be considered objectively serious. *Mendiola-Martinez v. Arpaio*, 836 F.3d 1239,  
23 1248 (9th Cir. 2016) (citations omitted). Unsanitary conditions that are severe or prolonged can  
24 "[u]nquestionably" violate the Eighth Amendment. *Anderson*, 45 F.3d at 1314 (reasoning that  
25 unsanitary conditions that lasted for months support an Eighth Amendment claim).

26 Plaintiff plausibly alleges an objectively serious deprivation. According to plaintiff,  
27 prison staff at COR served inmates meals from plastic racks that had been kicked across an  
28 unsanitary floor, and defendants "never once put[] the plastic racks through any type of safe

1 cleaning and sanitiz[ing] process.” (Doc. No. ¶ 19.) As a result of consuming food served in  
2 unsanitary conditions, plaintiff alleges that he became ill and suffered severe abdominal pain that  
3 required medical attention. (*Id.* ¶¶ 34-38.) Defendant Scalia allegedly stated that handling  
4 inmates’ meals in an unsanitary manner was the “daily routine.” (*Id.* ¶ 24.) These allegations  
5 suggest severe and prolonged unsanitary conditions.

6 The second requirement, deliberate indifference, is subjective. Deliberate indifference  
7 requires that a defendant know of and disregard “an excessive risk to inmate health or safety.”  
8 *Farmer*, 511 U.S. at 837. The defendant must be “aware of facts from which the inference could  
9 be drawn that a substantial risk of serious harm exists,” and the defendant must actually draw that  
10 inference. *Id.*; *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1068 (9th Cir. 2016).

11 Here, the allegations support the inference that defendants Scalia, Fritz, Hackworth,  
12 Aranda, and two Doe defendants were deliberately indifferent to unsanitary conditions:  
13 Defendants Scalia, Fritz, Hackworth, and the two Doe defendants personally distributed inmate  
14 meals. Defendants Campos and Aranda, who had management authority, allegedly knew of the  
15 unsanitary conditions but allowed the conditions to go uncorrected. The undersigned finds that  
16 plaintiff has stated Eighth Amendment claims against defendants Scalia, Fritz, Hackworth,  
17 Aranda, and two Doe defendants for unsanitary conditions that resulted in plaintiff’s severe  
18 abdominal pain.

### 19 **B. Failure to provide medical treatment**

20 The deliberate-indifference standard also applies to plaintiff’s claims against two Doe  
21 defendant nurses for delaying medical treatment for his abdominal pain. The Eighth Amendment  
22 prohibits prison medical staff from being deliberately indifferent to a prisoner’s objectively  
23 serious medical needs. *See Mendiola-Martinez*, 836 F.3d 1239, 1248 (citing *Estelle v. Gamble*,  
24 429 U.S. 97, 104 (1976)). A medical need is objectively serious when the failure to treat it could  
25 result in “significant injury” or the “unnecessary and wanton infliction of pain.” *Id.*

26 Deliberate indifference in the medical treatment context requires a plaintiff to establish  
27 that a defendant subjectively knew about a serious medical need and failed to respond adequately  
28 to that medical need. *See Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015). The denial of

1 medical treatment must be “‘medically unacceptable under the circumstances,’ and made ‘in  
2 conscious disregard of an excessive risk to [the inmate]’s health.’” *Id.* (quoting *Jackson v.*  
3 *McIntosh*, 90 F.3d 330, 332 (9th Cir.1996)). Complete denial, delay, or intentional interference  
4 with medical treatment can establish deliberate indifference. *Colwell v. Bannister*, 763 F.3d  
5 1060, 1066 (9th Cir. 2014) (citing *Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir.  
6 1988)). Denial of medical treatment based solely administrative policy can constitute deliberate  
7 indifference if the circumstances required prompt medical treatment. *See id.* at 1068.

8 Here, plaintiff states Eighth Amendment claims against the two nurses. Plaintiff plausibly  
9 alleges that he had an objectively serious medical need: his severe abdominal pain allegedly  
10 resulted in unnecessary pain because of the delay of medical treatment. His allegations,  
11 construed liberally, support the inference that the two nurses were deliberately indifferent to his  
12 severe pain. Plaintiff informed the first nurse that he had severe abdominal pain, but the nurse did  
13 nothing to assist him other than asking him to submit a form to a registered nurse. Plaintiff  
14 complained about his severe pain to the second nurse, but that nurse, too, did nothing to assist  
15 him other than telling him that he would be scheduled to be called in, “leaving Plaintiff to suffer  
16 in Pain.” (*Id.* ¶ 36.) Plaintiff allegedly waited weeks before he received medical treatment, and  
17 then only received treatment after he was transferred to a new institution. Plaintiff’s allegations  
18 are sufficient to advance beyond screening.

19 Plaintiff fails to state a deliberate indifference claim for denial of medical treatment  
20 against the prison staff members who distributed his meals. Plaintiff alleges that he yelled out of  
21 his cell door to contact one of the six defendants responsible for the unsanitary handling of his  
22 meals, but none came to his cell. Plaintiff also alleges that at least one defendant walked quickly  
23 past his cell, ignoring his condition. Plaintiff does not, however, allege that the defendants heard  
24 his yells or otherwise knew about his condition. Without the allegation that he informed these  
25 defendants of his pain, he has not stated a deliberate indifference claim. Plaintiff may amend the  
26 complaint, but the current complaint does not state claims against defendants Scalia, Fritz,  
27 Hackworth, and the two Doe defendants who distributed his meals for deprivation of medical  
28 treatment.



1           **C. Cold food**

2           Plaintiff may not proceed on his claims that he was served cold meals. He contends that  
3 his cold meals violated the Eighth Amendment because the five defendants who distributed his  
4 meals failed to plug the electrical cord of a food cart to a power outlet to keep his meals above  
5 135 degrees Fahrenheit. (Doc. No. ¶ 15.) California Health and Safety Code Section 113996(a)  
6 requires food retailers to keep “potentially hazardous food” above that temperature. Plaintiff,  
7 however, does not allege that the food at issue was potentially hazardous within the meaning of  
8 Section 113996(a) or that consuming cold food made him sick. The undersigned will recommend  
9 that the court dismiss without prejudice plaintiff’s claims based on being served food below 135  
10 degrees Fahrenheit.

11           **D. Proceeding against Doe defendants**

12           At this stage, plaintiff’s failure to identify by name the Doe defendants does not warrant  
13 dismissal of his claims against them. *See Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000)  
14 (en banc). The undersigned will recommend that the court allow plaintiff the opportunity to  
15 identify the Doe defendants’ real names through discovery. Plaintiff should note that the Doe  
16 defendants need not defend this case before they are served, and that plaintiff will need to provide  
17 the real names of the Doe defendants to the U.S. Marshal so that the Marshal can effect service.  
18 At a later date, the court will issue a scheduling order that sets a deadline for amending the  
19 complaint; plaintiff must identify the real names of the Doe defendants by that deadline, and  
20 failure to do so may result in the dismissal of his claims against them.

21           **IV. CONCLUSION AND RECOMMENDATIONS**

22           Under 28 U.S.C. § 636(c)(1), all parties named in a civil action must consent to a  
23 magistrate judge’s jurisdiction before that jurisdiction vests for “dispositive decisions.” *Williams*  
24 *v. King*, 875 F.3d 500, 504 (9th Cir. 2017). No defendant has appeared or consented to a  
25 magistrate judge’s jurisdiction, so any dismissal of a claim requires an order from a district judge.  
26 Thus, the undersigned submits these findings and recommendations to a United States District  
27 Judge under 28 U.S.C. § 636(b)(1).  
28

1 The undersigned has screened plaintiff's complaint and finds that plaintiff states the  
2 following two sets of claims under the Eighth Amendment:

- 3 1. claims against defendants J. Scalia, A. Fritz, B. Hackworth,  
4 A. Aranda, J. Campos, and two Doe defendants for  
5 unsanitary conditions that resulted in plaintiff's severe  
6 abdominal pain that lasted for weeks; and
- 7 2. claims against two nurse Doe defendants for delaying  
8 medical treatment for plaintiff's abdominal pain.

9 The undersigned recommends that the court allow plaintiff to proceed on these claims and  
10 dismiss without prejudice all other claims, namely plaintiff's claims against Scalia, Fritz,  
11 Hackworth, and two Doe defendants for deprivation of medical treatment and any claim for  
12 failure to maintain plaintiff's meals above 135 degrees Fahrenheit.

13 Within twenty-one (21) days of service of these findings and recommendations, plaintiff  
14 may file written objections with the court. Any such objections must be captioned "Objections to  
15 Magistrate Judge's Findings and Recommendations." Failure to file objections within the  
16 specified time may result in the waiver of rights on appeal. *See Wilkerson v. Wheeler*, 772 F.3d  
17 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

18 **V. ORDER**

19 The clerk of the court is directed to assign this case to a United States District Judge for  
20 review of these findings and recommendations. The clerk of the court is directed to amend the  
21 case caption to add four (4) Doe defendants.

22 IT IS SO ORDERED.

23 Dated: July 10, 2018

24   
25 UNITED STATES MAGISTRATE JUDGE