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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALVARO QUEZADA,  
  
                                Plaintiff,  
  
                                v.  
  
AKABIKE, et al.,  
  
                                Defendants.

No. 1:18-cv-00797-DAD-JLT (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND GRANTING IN  
PART DEFENDANTS’ MOTION TO  
DISMISS

(Doc. Nos. 41, 48)

Plaintiff Alvaro Quezada is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought under 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

This matter proceeds on plaintiff’s third amended complaint (Doc. No. 29) on claims of deliberate indifference to serious medical needs against defendants Akabike, Ceja, and Harris. (Doc. No. 36.) On September 29, 2021, the assigned magistrate judge issued findings and recommendations, recommending that defendants’ motion to dismiss be granted in part and denied in part. (Doc. No. 48.) (*Id.* at 3–4.) The magistrate judge found that plaintiff stated cognizable claims of deliberate indifference with respect to his first and second claims, but failed to state a cognizable claim with respect to his third claim because plaintiff failed to allege facts showing that he was harmed as a result of defendant Ceja’s alleged refusal to activate his medical

1 emergency alarm after plaintiff's second fall when defendant Harris activated his alarm  
2 immediately thereafter. (*Id.* at 3–4, 10.) Regarding plaintiff's deliberate indifference claim  
3 related to defendants Ceja and Harris's refusal to move plaintiff to a lower-tier cell and forcing  
4 him to walk down stairs where he fell a second time, the magistrate judge found that a more  
5 developed factual record is required to conclusively determine whether defendants Ceja and  
6 Harris are entitled to qualified immunity. (*Id.* at 11–12.) The findings and recommendations  
7 were served on the parties and provided 21 days to file objections thereto. (*Id.* at 13.) Plaintiff  
8 filed objections on October 25, 2021, and defendants filed a response thereto on November 8,  
9 2021. (Doc. Nos. 49, 51.) Defendants have not filed objections to the pending findings and  
10 recommendations, and the time to do so has passed.

11 Although plaintiff objects to the magistrate judge's recommendation that his third claim  
12 for relief be dismissed, plaintiff does not meaningfully call into question the finding that his third  
13 amended complaint fails to plead facts, if proven, showing that plaintiff was harmed as a result of  
14 defendant Ceja's alleged failure to activate his medical emergency alarm. In his objections,  
15 plaintiff conflates his second and third claims, and focuses on defendants' alleged misconduct, as  
16 opposed to the harm allegedly caused by the misconduct specifically alleged in his third claim for  
17 relief. (*See* Doc. No. 49 at 2–6.) Where plaintiff does allege harm, his allegations are conclusory  
18 and not supported by adequate factual allegations. (*Id.*) *See Ashcroft v. Iqbal*, 556 U.S. 662, 678  
19 (2009) (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory  
20 statements, do not suffice.”) (citation omitted). Given that plaintiff has not only failed to plead  
21 sufficient facts in his claim 3 showing that he was harmed as a result of defendant Ceja's alleged  
22 actions or inaction in his third amended complaint, but also has failed to suggest that he could  
23 allege such facts in his opposition to defendants' motion to dismiss and in his objections to the  
24 magistrate judge's findings and recommendations, the court finds that plaintiff would be unable  
25 to plead sufficient facts to cure this deficiency in a fourth amended complaint. Therefore,  
26 because the granting of further leave to amend would be futile, plaintiff's third claim will be  
27 dismissed without leave to amend. *See Akhtar v. Mesa*, 698 F.3d 1202, 1213 (9th Cir. 2012).

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