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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANDRE LAFON MOULTRIE,
Plaintiff,
v.
HAYNES, et al.,
Defendants.

1:18-cv-01555-LJO-SKO (PC)
FINDINGS AND RECOMMENDATIONS
TO DISMISS ACTION
(Doc. 13)
21-DAY DEADLINE

Plaintiff Andre Lafon Moultrie, an inmate proceeding *pro se* and *in forma pauperis*, alleges that the defendants failed to protect him against assaults by other inmates in violation of the Eighth Amendment. (Doc. 13.) In Plaintiff’s first and second amended complaints, the Court found that Plaintiff failed to state a cognizable claim for relief.¹ (Docs. 10, 12.) The Court provided Plaintiff with the pleading requirements and legal standards for his alleged claims and granted him leave to amend. (*Id.*) Despite these opportunities, Plaintiff still fails to state a cognizable claim in his third amended complaint (TAC). The Court finds that Plaintiff is unable to cure the deficiencies in his pleading, *see Akhtar v. Mesa*, 698 F.3d 1202, 1212-13 (9th Cir. 2012), and recommends that this action be **DISMISSED**.

I. SCREENING REQUIREMENT

The Court is required to screen complaints brought by prisoners seeking relief against a

¹ Plaintiff filed his first amended complaint before the Court had the opportunity to screen his original complaint.

1 governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
2 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
3 legally frivolous or malicious, fail to state a claim upon which relief may be granted, or seek
4 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). The
5 Court should dismiss a complaint if it lacks a cognizable legal theory or fails to allege sufficient
6 facts to support a cognizable legal theory. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
7 699 (9th Cir. 1990).

8 **II. PLEADING REQUIREMENTS**

9 **A. Federal Rule of Civil Procedure 8(a)**

10 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
11 exceptions.” *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 513 (2002). A complaint must contain
12 “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R.
13 Civ. Pro. 8(a)(2). “Such a statement must simply give the defendant fair notice of what the
14 plaintiff’s claim is and the grounds upon which it rests.” *Swierkiewicz*, 534 U.S. at 512 (internal
15 quotation marks and citation omitted).

16 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a
17 cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556
18 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must
19 set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’”
20 *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). Factual allegations are accepted as
21 true, but legal conclusions are not. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

22 The Court construes pleadings of *pro se* prisoners liberally and affords them the benefit of
23 any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citation omitted). However, “the
24 liberal pleading standard ... applies only to a plaintiff’s factual allegations,” not his legal theories.
25 *Neitze v. Williams*, 490 U.S. 319, 330 n.9 (1989). Furthermore, “a liberal interpretation of a civil
26 rights complaint may not supply essential elements of the claim that were not initially pled,”
27 *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (internal quotation
28 marks and citation omitted), and courts “are not required to indulge unwarranted inferences.” *Doe*

1 *I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and
2 citation omitted). The “sheer possibility that a defendant has acted unlawfully” is not sufficient to
3 state a cognizable claim, and “facts that are merely consistent with a defendant’s liability” fall
4 short. *Iqbal*, 556 U.S. at 678 (internal quotation marks and citation omitted).

5 **B. Linkage Requirement**

6 Section 1983 provides a cause of action for the violation of constitutional or other federal
7 rights by persons acting under color of state law. *See* 42 U.S.C. § 1983. To state a claim under
8 Section 1983, a plaintiff must show a causal connection or link between the actions of the
9 defendants and the deprivation alleged to have been suffered by the plaintiff. *See Rizzo v. Goode*,
10 423 U.S. 362, 373-75 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the
11 deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative
12 act, participates in another’s affirmative acts, or omits to perform an act which he is legally
13 required to do that causes the deprivation of which complaint is made.” *Johnson v. Duffy*, 588
14 F.2d 740, 743 (9th Cir. 1978) (citation omitted).

15 To state a claim for relief, a plaintiff must link each named defendant with some
16 affirmative act or omission that caused a violation of the plaintiff’s federal rights. The plaintiff
17 must clearly identify which defendant he believes is responsible for each violation of his rights
18 and set forth the supporting factual basis, as his complaint must put each defendant on notice of
19 his claims against him or her. *See Austin v. Terhune*, 367 F.3d 1167, 1171 (9th Cir. 2004).

20 **III. DISCUSSION**

21 **A. Plaintiff’s Allegations**

22 In his TAC, Plaintiff alleges that, on March 3, 2018, Defendant-Deputy Chavez ordered
23 him to the “Sally Port” at “Main Jail 4th floor” of Fresno County Jail to distribute lunches to
24 other inmates. (Doc. 13 at 3.) While Plaintiff was serving lunches, Defendant-Deputy Haynes
25 opened the door to “Main Jail 4B” pod, “allowing upwards of ... twenty inmates to rush out” and
26 assault Plaintiff. (*Id.* at 4.) Deputy Haynes failed to secure the sally port before opening the door
27 to pod 4B. (*Id.*) In his SAC, Plaintiff states that this pod is a “keep separate pod,” and that inmates
28 moving outside of it should be escorted. (Doc. 11 at 4.) Defendants failed to escort or otherwise

1 provide sufficient attention to Plaintiff while he was serving lunches. (*Id.*)

2 For the reasons discussed below, Plaintiff's claims are not cognizable. In its screening
3 orders, the Court provided Plaintiff with the legal standards for the claims of failure to protect and
4 retaliation. (Docs. 10, 12.) The Court addresses each below.

5 **B. Claims for Relief**

6 1. Failure to Protect

7 "[T]he treatment a prisoner receives in prison and the conditions under which he is
8 confined are subject to scrutiny under the Eighth Amendment." *Farmer v. Brennan*, 511 U.S.
9 825, 832 (1994) (internal quotation marks and citation omitted). Prison officials have a duty "to
10 take reasonable measures to guarantee the safety of inmates, which has been interpreted to
11 include a duty to protect prisoners." *Labatad v. Corr. Corp. of Am.*, 714 F.3d 1155, 1160 (9th Cir.
12 2013) (citing *Farmer*, 511 U.S. at 832-33; *Hearns v. Terhune*, 413 F.3d 1036, 1040 (9th Cir.
13 2005)). To establish a violation of this duty, a prisoner "must show that ... officials acted with
14 *deliberate indifference* to the threat of serious harm or injury." *Labatad*, 714 F.3d at 1160
15 (emphasis added) (citation omitted). The Supreme Court has explained that "deliberate
16 indifference entails something more than mere negligence, ... [but] something less than acts or
17 omissions for the very purpose of causing harm or with the knowledge that harm will result."
18 *Farmer*, 511 U.S. at 835. A prison official shows "deliberate indifference" to a threat of serious
19 injury to an inmate when he "knows of and disregards an excessive risk to inmate health or
20 safety." *Id.* at 837.

21 The deliberate indifference standard includes both objective and subjective components.
22 First, objectively, the alleged deprivation must be "sufficiently serious." *Id.* at 834. "For a claim
23 based on failure to prevent harm, the inmate must show that he is incarcerated under conditions
24 posing a substantial risk of serious harm." *Id.* (citation omitted). Here, the Court finds that
25 Plaintiff's allegation that he was beaten by inmates in an area in which he should have had an
26 escort, and in which Plaintiff was engaged in activities requested by a defendant, is sufficiently
27 serious to meet the objective prong.

1 Second, subjectively, the prison official must “know[] of and disregard[] an excessive risk
2 to inmate health and safety.” *Id.* at 837 (as quoted in *Anderson v. Cty. of Kern*, 45 F.3d 1310,
3 1313 (9th Cir. 1995)). The prison official “must both be aware of facts from which the inference
4 could be drawn that a substantial risk of serious harm exists, and he must also draw the
5 inference.” *Farmer*, 511 U.S. at 837. In other words, the prison official is liable “only if he knows
6 that inmates face a substantial risk of serious harm and disregards that risk by failing to take
7 reasonable measures to abate it.” *Id.* at 847.

8 Plaintiff alleges that Defendant Chavez asked him to serve lunches alone in an area in
9 which he should have had an escort. (Doc. 11 at 3-4.) Plaintiff also alleges that Defendant Haynes
10 permitted inmates to enter the area, thereby allowing the inmates to attack Plaintiff. (Doc. 13 at
11 4.) These allegations do not suffice to show deliberate indifference.

12 Although Plaintiff states that Deputy Chaves “deliberately ordered [him] to the ‘Sally
13 Port,’” (*id.* at 3), and that Deputy Haynes “deliberately opened the door” to B pod, (*id.* at 4),
14 Plaintiff does not allege that Defendants were deliberately indifferent to an excessive risk to his
15 safety. To state a deliberate indifference claim, Plaintiff need not only show that Deputy Haynes
16 purposefully opened the door, he must also show that a defendant knew that, by opening the door,
17 Plaintiff was at substantial risk of serious harm. *See Farmer*, 511 U.S. at 837. While Plaintiff’s
18 allegations may show that Defendants were negligent—which is not actionable here—they do not
19 demonstrate that they permitted the inmates to enter knowing that Plaintiff would likely be
20 attacked.

21 2. Retaliation

22 A claim for retaliation has five elements. *Watison v. Carter*, 668 F.3d 1108, 1114 (9th Cir.
23 2012). First, the plaintiff must allege that he engaged in protected activity. *Id.* For example, filing
24 an inmate grievance is protected, *Rhodes v. Robinson*, 408 F.3d 559, 568 (9th Cir. 2005), as is the
25 right to access the courts. *Bounds v. Smith*, 430 U.S. 817, 821 (1977); *see also Rizzo v. Dawson*,
26 778 F.2d 527, 531-32 (9th Cir. 1985). Second, the plaintiff must show that the defendant took
27 adverse action against him. *Watison*, 668 F.3d at 1114 (citation omitted). “Third, the plaintiff
28 must allege a causal connection between the adverse action and the protected conduct.” *Id.* In

1 other words, the plaintiff must claim the defendant subjected him to an adverse action *because of*
2 his engagement in protected activity. *Rhodes*, 408 F.3d at 567. “Fourth, the plaintiff must allege
3 that the official’s acts would chill or silence a person of ordinary firmness from future First
4 Amendment activities.” *Watison*, 668 F.3d at 1114 (internal quotation marks and citation
5 omitted). “Fifth, the plaintiff must allege ‘that the prison authorities’ retaliatory action did not
6 advance legitimate goals of the correctional institution....’” *Id.* (quoting *Rizzo*, 778 F.2d at 532).

7 Here, Plaintiff does not state a cognizable retaliation claim. Plaintiff does not set forth
8 allegations that he engaged in protected activity, that Defendants knew about such activity, or that
9 such activity was a motivating factor for either of the defendant’s actions. The mere possibility
10 that a defendant acted in retaliation is not sufficient to state a cognizable claim. *See Iqbal*, 556
11 U.S. at 678.

12 IV. CONCLUSION AND RECOMMENDATION

13 Though Plaintiff has received two opportunities to amend his pleading, Plaintiff’s third
14 amended complaint still fails to state a claim on which relief can be granted. Given that Plaintiff’s
15 current complaint suffers from that same deficiencies as in his prior two complaints, the Court
16 finds that further amendment would be futile. Accordingly, the Court **RECOMMENDS** that this
17 action be dismissed.

18 These Findings and Recommendations will be submitted to the United States District
19 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within 21 days**
20 of the date of service of these Findings and Recommendations, Plaintiff may file written
21 objections with the Court. The document should be captioned, “Objections to Magistrate Judge’s
22 Findings and Recommendations.” Plaintiff’s failure to file objections within the specified time
23 may result in waiver of his rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
24 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

25
26 IT IS SO ORDERED.

27 Dated: **November 19, 2019**

/s/ Sheila K. Oberto
_____ **UNITED STATES MAGISTRATE JUDGE**

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