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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

OUBICHON)	
Plaintiff,)	No. 2:06-cv-02749-CAS
vs.)	
WALKER, ET AL.)	<u>ORDER</u>
Defendants.)	

Plaintiff is a state prisoner proceeding pro se, seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this Court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff filed his initial complaint on December 6, 2006, against defendant Tom Carey. On September 11, 2012, plaintiff submitted a motion for leave to file a third amended complaint (“TAC”), dks.40-41, adding defendants C.L. Parks, J. Maloney, C. Orrick, K. Jessup, and J. Harmer (“the additional defendants”). The TAC alleges that, subsequent to a prison riot not involving plaintiff, he was confined to a dining hall containing a toilet overflowing with human waste. TAC

1 ¶¶ 13–29. Plaintiff alleges that he slipped in overflowing water from the toilet,
2 fracturing his wrist and hurting his back. Id. ¶ 31. Plaintiff contends he was not
3 given adequate medical care to treat his injuries Id. ¶¶ 33–56. Plaintiff asserts
4 claims for deliberate indifference to serious medical needs, in violation of the
5 Eighth Amendment, and for violations of the Fourteenth Amendment.

6 The Court hereby GRANTS the motion for leave to file a third amended
7 complaint. After conducting a screening pursuant to 28 U.S.C. § 1915A, the Court
8 finds that the TAC states a cognizable claim for relief pursuant to 42 U.S.C.
9 § 1983. Moreover, although defendant Carey submitted a waiver of service, dkt.
10 46, the additional defendants have not yet been served. Accordingly, the Court
11 finds that service is appropriate for the additional defendants.

12 Additionally, on August 27, 2013, defendant Carey filed a motion to dismiss
13 the TAC with respect to him. Plaintiff opposed this motion on November 4, 2013,
14 and defendant Carey has not replied. After reviewing the motion to dismiss, the
15 Court concludes that the motion to dismiss should be GRANTED. The TAC,
16 although it names Carey, the warden of plaintiff’s prison, as a defendant, does not
17 contain any allegations of actions or failures to act by Carey. Instead, all of the
18 TAC’s allegations relate to the additional defendants, who are the correctional
19 officers and prison nurse who were allegedly indifferent to plaintiff’s situation.
20 Moreover, absent additional specific allegations, defendant Carey cannot be held
21 liable for the acts of his subordinates. See Ashcroft v. Iqbal, 556 U.S. 662, 676,
22 (2009) (“Because vicarious liability is inapplicable to Bivens and § 1983 suits, a
23 plaintiff must plead that each Government-official defendant, through the official’s
24 own individual actions, has violated the Constitution.”). Accordingly, the Court
25 finds that plaintiff has not stated a claim against defendant Carey.

1 In accordance with the foregoing, IT IS HEREBY ORDERED that:

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3 1. Plaintiff's motion to file a TAC is hereby granted.

4 2. Service is appropriate on the additional defendants C.L. Parks, J.
5 Maloney, C. Orrick, K. Jessup, and J. Harmer.

6 3. The Clerk of the Court shall send plaintiff five USM-285 forms, one
7 summons, an instruction sheet and a copy of the TAC filed September 11, 2012.

8 4. Within thirty days from the date of this order, plaintiff shall complete the
9 attached Notice of Submission of Documents and submit the following documents
10 to the Court:

11 a. The completed Notice of Submission of Documents;

12 b. One completed summons;

13 c. One completed USM-285 form for each defendant listed in
14 number 1 above; and

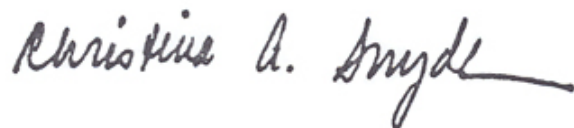
15 d. Five copies of the TAC filed September 11, 2012.

16 5. Plaintiff need not attempt service on the additional defendants and need
17 not request waiver of service. Upon receipt of the above-described documents, the
18 Court will direct the United States Marshal to serve the additional defendants
19 pursuant to Federal Rule of Civil Procedure 4 without payment of costs.

20 6. Defendant Carey's motion to dismiss is hereby GRANTED.

21 7. Plaintiff's motion for default judgment, dkt. 51, is hereby DENIED as
22 moot.

23 DATED: February 27, 2014



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Christina A. Snyder
26 UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

OUBICHON)
Plaintiff,) No. 2:06-cv-02749-CAS
vs.)
WALKER, ET AL.) ORDER
Defendants.)
_____ /

Plaintiff hereby submits the following documents in compliance with the
Court's order filed February 27, 2013:

- _____ completed summons form
- _____ completed USM-285 forms
- _____ copies of the First Amended Complaint

DATED:

Plaintiff