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

AMADOR SERRANO,
Plaintiff,

No. CIV S-09-2927-FCD-CMK-P

vs.

FINDINGS AND RECOMMENDATIONS

CALIFORNIA CORRECTIONAL
DEPARTMENT OF CORRECTION,
et al.,
Defendants.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s amended complaint (Doc. 23).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that

1 claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172,
2 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the
3 complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it
4 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege
5 with at least some degree of particularity overt acts by specific defendants which support the
6 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
7 impossible for the court to conduct the screening required by law when the allegations are vague
8 and conclusory.

10 I. PLAINTIFF'S ALLEGATIONS

11 Plaintiff names the following as defendants in the caption of the amended
12 complaint: The California Department of Corrections and Rehabilitation ("CDCR") and the
13 California Correctional Center ("CCC"). In the body of the complaint plaintiff lists as
14 defendants the following: Fleshman and Youngblood. As to Fleshman, plaintiff alleges:

15 . . . Th officer had no concern or worries of not being placed in a safety
16 belt or harness on me for traveling purposes by law. Th officer negligence
17 and disregard, indifference for the safety and welfare of inmates is a gross
18 violation of civil rights. The officials violated my safety by going a
19 excessive speed that all most caused a collision with a other vehicle, the
20 official failed to give me a incident report of the accident with the
21 information of vehicle, the tel-camera on board footage of the accident of
22 the cause of my injuries and the lack of safety devices. . . . [sic].

20 As to Youngblood, plaintiff claims:

21 . . . The officer had failed the decent to warning me that it would best
22 cancel my appointment due vehicle not having proper safety devices to
23 transporting me in case of accident, as his sworn duty to advising me. The
24 officer also moved me and told me to get up after the accident in which
25 could have caused me more serious if I would have sustained a back
26 injury. The officer failed to call for a medical team, ambulance to check
my injuries or give a professional opinio to moving me, the negligence of
the most important policy consideration foreseeability of harm; as a
general principle a defendant owes a duty of care to all persons who are
foreseeable endanger by his conduct. . . . [sic].

1 Plaintiff adds: “The deliberate indifference was underscored when the officers failed to write a
2 incident report . . . of the circumstances surrounding the accident and investigative report that
3 could satisfactorily explain why there was a near collision. . . .” [sic]. It appears that plaintiff’s
4 claims arise from an auto accident in April 2008.

6 II. DISCUSSION

7 First, as to defendants CDCR and CCC, such defendants are immune from suit, as
8 explained in the court’s May 7, 2010, order. See Alabama v. Pugh, 438 U.S. 781, 782 (1978)
9 (per curiam); Hale v. Arizona, 993 F.2d 1387, 1398-99 (9th Cir. 1993) (en banc).

10 As to defendant Fleshman, plaintiff appears to allege that this defendant was
11 negligent for not requiring plaintiff to wear seatbelts while he was being driven from one place to
12 another. Alleged negligence is an insufficient basis for liability under § 1983. See e.g. Estelle v.
13 Gamble, 429 U.S. 97, 106 (1976). In particular, plaintiff has not alleged the necessary element of
14 deliberate indifference. See Farmer v. Brennan, 511 U.S. 825, 834 (1994).

15 As to defendant Youngblood, plaintiff alleges that he “failed to call for a medical
16 team, ambulance to check my injuries or give a professional opinio to moving. . . .” To the
17 extent plaintiff claims that Youngblood was negligent for moving him after the accident without
18 obtaining medical clearance to do so. As discussed above, such an allegation of negligence does
19 not support § 1983 liability. To the extent plaintiff alleges that Youngblood was deliberately
20 indifferent to plaintiff’s injuries by not calling for a “medical team, ambulance,” documents
21 attached to plaintiff’s complaint clearly indicate that he was in fact provided medical treatment
22 for injuries sustained in the accident. Plaintiff does not claim that Youngblood’s conduct or lack
23 thereof resulted in any delay which caused further injury. Where delay is alleged, however, the
24 prisoner must also demonstrate that the delay led to further injury. McGuckin v. Smith, 974
25 F.2d 1050, 1060 (9th Cir. 1992).

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1 Finally, with respect to plaintiff's allegations that defendants failed to provide him
2 with documentation and other evidence relating to the auto accident, the court is unaware of any
3 constitutional provision or federal statute requiring such disclosure, and plaintiff does not cite to
4 any. Therefore, plaintiff has not alleged a violation of constitutional or federal law as would
5 provide a basis for liability under § 1983.

6
7 **III. CONCLUSION**

8 Because it does not appear possible that the deficiencies identified herein can be
9 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of
10 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

11 Based on the foregoing, the undersigned recommends that this action be dismissed
12 and that all pending motions be denied as moot.

13 These findings and recommendations are submitted to the United States District
14 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
15 after being served with these findings and recommendations, any party may file written
16 objections with the court. Responses to objections shall be filed within 14 days after service of
17 objections. Failure to file objections within the specified time may waive the right to appeal.
18 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19
20 DATED: July 27, 2010

21 
22 **CRAIG M. KELLISON**
23 UNITED STATES MAGISTRATE JUDGE
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