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

BENNIE WILSON,

No. CIV S-11-0973-JAM-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

C. ECHEVARRIA, 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 complaint (Doc. 1).

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 claims must be stated simply, concisely, and directly. See McHenry v. Renne,

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

8 Plaintiff names Echevarria and Rupio, both correctional officers, as defendants to
9 this action. Plaintiff claims:

10 On 11-24-10 C. Echevarria and V. Rupio left me in a health and safety
11 hazardous zone for eight hours. C. Echevarria and V Rupio left the
building without informing co-workers of the hazardous zone.

12 Documents attached to the complaint reveal that the "hazardous zone" referenced by plaintiff
13 was created by a temporary flooding of his cell due to a heavy rainfall.

14 The treatment a prisoner receives in prison and the conditions under which the
15 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel
16 and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan,
17 511 U.S. 825, 832 (1994). The Eighth Amendment ". . . embodies broad and idealistic concepts
18 of dignity, civilized standards, humanity, and decency." Estelle v. Gamble, 429 U.S. 97, 102
19 (1976). Conditions of confinement may, however, be harsh and restrictive. See Rhodes v.
20 Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with
21 "food, clothing, shelter, sanitation, medical care, and personal safety." Toussaint v. McCarthy,
22 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only
23 when two requirements are met: (1) objectively, the official's act or omission must be so serious
24 such that it results in the denial of the minimal civilized measure of life's necessities; and
25 (2) subjectively, the prison official must have acted unnecessarily and wantonly for the purpose
26 of inflicting harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a

1 prison official must have a “sufficiently culpable mind.” See id.

2 In this case, the court finds that, on the facts alleged by plaintiff, he cannot meet
3 the objective element. It is appropriate when considering whether a condition of confinement
4 violates the Eighth Amendment to consider the amount of time to which the prisoner was
5 subjected to the condition. See Hutto v. Finney, 437 U.S. 678, 686-87 (1978). Here, plaintiff
6 states that he was confined in a flooded cell for eight hours. In Hutto, the Supreme Court stated
7 that “[a] filthy, overcrowded cell and a diet of ‘grue’ might be tolerable for a few days and
8 intolerably cruel for weeks or months.” The flooding complained of in this case simply did not
9 affect plaintiff long enough to rise to the level of an Eighth Amendment violation.

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

13 Based on the foregoing, the undersigned recommends that this action be dismissed
14 with prejudice.

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

21
22 DATED: July 12, 2011

23 
24 **CRAIG M. KELLISON**
25 UNITED STATES MAGISTRATE JUDGE
26