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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIC ALSTON,  
  
  Plaintiff,  
  
          v.  
  
COUNTY OF SACRAMENTO  
SHERIFF’S DEPARTMENT et al.,  
  
  Defendants.

No. 2:13-cv-1488 DAD P

ORDER AND  
FINDINGS AND RECOMMENDATIONS

Plaintiff is a former county jail inmate proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s second amended complaint.

**SCREENING REQUIREMENT**

The court must dismiss an in forma pauperis case at any time if the allegation of poverty is found to be untrue or if it is determined that the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant. See 28 U.S.C. § 1915(e)(2). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however

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1 inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639,  
2 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

3 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and plain  
4 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the  
5 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic  
6 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
7 However, in order to survive dismissal for failure to state a claim a complaint must contain more  
8 than “a formulaic recitation of the elements of a cause of action;” it must contain factual  
9 allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic, 550  
10 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the  
11 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
12 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
13 doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

14 The Civil Rights Act under which this action was filed provides as follows:

15 Every person who, under color of [state law] . . . subjects, or causes  
16 to be subjected, any citizen of the United States . . . to the  
17 deprivation of any rights, privileges, or immunities secured by the  
18 Constitution . . . shall be liable to the party injured in an action at  
19 law, suit in equity, or other proper proceeding for redress.

20 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
21 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
22 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
23 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the  
24 meaning of § 1983, if he does an affirmative act, participates in another’s affirmative acts or  
25 omits to perform an act which he is legally required to do that causes the deprivation of which  
26 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

27 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of  
28 their employees under a theory of respondeat superior and, therefore, when a named defendant  
holds a supervisory position, the causal link between him and the claimed constitutional  
violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);

1 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations  
2 concerning the involvement of official personnel in civil rights violations are not sufficient. See  
3 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

#### 4 **PLAINTIFF'S SECOND AMENDED COMPLAINT**

5 In plaintiff's second amended complaint, he has identified the County of Sacramento,  
6 Sheriff Scott Jones, and twenty or more other county jail officials and medical personnel as the  
7 defendants in this action. Plaintiff alleges that he suffers from serious medical issues related to  
8 his knee and has a history of mental health illness. He further alleges that he has prescribed  
9 medication and medical devices to help him, including a knee brace, and a "recommendation"  
10 that he be housed on the lower tier of the jail so he does not have to walk up or down stairs. (Sec.  
11 Am. Compl. 2-8.)

12 Plaintiff alleges that in December 2012, defendants arrested him in traffic court. During  
13 the course of that arrest, plaintiff alleges that defendants injured him. Plaintiff acknowledges that  
14 he was mentally unstable at the time of his arrest because he had not taken his mental health  
15 medication for some time. Plaintiff alleges that during his transport to the county jail, he fell a  
16 number of times and suffered a head injury because defendants did not strap him in the police van  
17 with a safety belt. Plaintiff also alleges that the defendants had all of his medical paper work and  
18 SSI paperwork that reflected his disabilities, but they lost it. (Sec. Am. Compl. 9-11.)

19 Upon arrival at the jail, plaintiff alleges that county jail officials housed him in the  
20 medical unit. Plaintiff alleges that he began experiencing a "mental illness episode" and pushed  
21 his bed into his cell door numerous times doing significant damage to the cell and cell door.  
22 According to plaintiff, defendants put handcuffs and leg restraints on him and placed him in  
23 safety cell #1. They left plaintiff shackled there for hours and caused him to urinate and defecate  
24 on himself. A deputy brought plaintiff a roll of new clothes, put him in another safety cell, and  
25 told him to take a bird bath. On the following day, plaintiff alleges that defendants believed he  
26 was a danger to himself and shackled him to his bed, gave him two un-prescribed medications,  
27 refused to feed him lunch, and forced him to urinate and defecate on himself again. (Sec. Am.  
28 Compl. at 12-14.)

1 Two days later, plaintiff alleges that he was required to go to court. According to  
2 plaintiff, defendants knew he had a knee problem, had just had surgery, and needed a knee brace,  
3 but they forced him to walk up the stairs to court. Plaintiff alleges that he told them he could not  
4 walk up the stairs because of the pain he was in, but the deputies ignored him. Plaintiff notes that  
5 defendants also housed him on the eighth floor of the jail and made him walk up and down the  
6 stairs each time he needed to leave or see a visitor. (Sec. Am. Compl. at 14-16.)

7 In January 2013, plaintiff alleges that his knee locked up and gave out while he was at the  
8 jail. Plaintiff asked Correctional Health Services for an MRI or an x-ray, but they denied his  
9 requests, which plaintiff believes resulted in further injury to his knee. Plaintiff also alleges that  
10 he asked for an asthma inhaler when he was having trouble breathing after taking Naproxen, but  
11 Correctional Health Services did not respond to his request. In the same month, plaintiff was  
12 transferred to Rio Cosumnes Correctional Center. He alleges that defendants there also forced  
13 him to climb stairs. (Sec. Am. Compl. at 16-19.)

14 Plaintiff claims that the defendants were deliberately indifferent to his serious medical  
15 needs, violated the Americans with Disabilities Act (“ADA”), maintained unconstitutional  
16 policies and negligently supervised staff, and violated state law. (Sec. Am. Compl. at 22-26.)

## 17 **DISCUSSION**

18 The court will address each of plaintiff’s claims in turn. First, as to plaintiff’s inadequate  
19 medical care claims, this court finds that liberally construed plaintiff’s second amended complaint  
20 appears to state a cognizable claim for relief for deliberate indifference to his serious medical  
21 needs under the Fourteenth Amendment. Specifically, the court finds that plaintiff’s complaint  
22 appears to state a cognizable claim against defendants County of Sacramento, Jones, Fitch,  
23 Douglas, Steed, Harrison, Bacoeh, Gandhi, Grgich, Carmello, Doe 12, and Doe 13 in connection  
24 with their refusal to adhere to his medical “recommendation” or chrono stating he needed to be  
25 housed on a lower tier and avoid climbing stairs. See Simmons v. Navajo County, 609 F.3d  
26 1011, 1017 (9th Cir. 2010) (“Although the Fourteenth Amendment’s Due Process Clause, rather  
27 than the Eighth Amendment’s protection against cruel and unusual punishment, applies to pretrial  
28 detainees, we apply the same standards in both cases.”) (internal citations omitted); see also

1 Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 168-69  
2 (1993) (allegations of municipal liability do not require heightened pleading standard); Galbraith  
3 v. County of Santa Clara, 307 F.3d 1119, 1127 (9th Cir. 2002) (holding that it is improper to  
4 dismiss on the pleadings alone a § 1983 complaint alleging municipal liability even if the claim is  
5 based on nothing more than a bare allegation that individual employee’s conduct conformed to  
6 official policy, conduct, or practice). The court further finds that plaintiff’s complaint appears to  
7 state a cognizable claim against these same defendants for negligence in connection with their  
8 refusal to adhere to his medical “recommendation” or chrono. See Iieto v. Glock Inc., 349 F.3d  
9 1191, 1203 (9th Cir. 2003) (negligence under California law requires duty, breach, causation, and  
10 damages). If plaintiff can prove the allegations in his complaint, he has a reasonable opportunity  
11 to prevail on the merits of this action.<sup>1</sup>

12 Turning now to plaintiff’s ADA claims, the court finds that plaintiff’s second amended  
13 complaint fails to state a cognizable claim for relief. Title II of the ADA provides that:

14 no qualified individual with a disability shall, by reason of such  
15 disability, be excluded from participation in or be denied the  
16 benefits of the services, programs, or activities of a public entity, or  
be subject to discrimination by such entity.

17 As this court previously advised plaintiff, to state a claim under the ADA, a plaintiff must allege  
18 that: (1) he or she is a qualified individual with a disability; (2) he or she was excluded from  
19 participation in or otherwise discriminated against with regard to a public entity’s services,  
20 programs, or activities, and (3) such exclusion or discrimination was by reason of his or her

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22 <sup>1</sup> The undersigned finds that plaintiff’s allegations against the remaining defendants for their  
23 alleged inadequate medical care do not rise to the level of a federal constitutional violation. As  
24 an initial matter, in many instances, plaintiff fails to specify which named defendant was involved  
25 in the denial of his medical care, and instead, only refers generally to “defendants” or  
26 “Correctional Health Services.” Moreover, as this court previously advised plaintiff, mere  
27 ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support [a] cause of action” for  
28 deliberate indifference. Broughton v. Cutter Lab., 622 F.2d 458, 460 (9th Cir. 1980) (citing  
Estelle v. Gamble, 429 U.S. 97, 105-06 (1976)). Likewise, mere differences of opinion between a  
prisoner and prison medical staff as to the proper course of treatment for a medical condition do  
not give rise to a § 1983 claim. See Snow v. McDaniel, 681 F.3d 978, 988 (9th Cir. 2012);  
Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996); Toguchi v. Soon Hwang Chung, 391 F.3d  
1051, 1058 (9th Cir. 2004); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989); Franklin v.  
Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981).

1 disability. See O’Guinn v. Lovelock Correctional Center, 502 F.3d 1056, 1060 (9th Cir. 2007);  
2 Lovell v. Chandler, 303 F.3d 1039, 1052 (9th Cir. 2002).

3 In his second amended complaint, plaintiff has not alleged that defendants discriminated  
4 against him or treated him differently *because of* a disability. See Duvall v. County of Kitsap,  
5 260 F.3d 1124, 1138 (9th Cir. 2001) (Title II of the ADA requires intentional discrimination);  
6 Rucker v. Trent, No. C 11-4312 YGR (PR), 2012 WL 4677741 at \*4 (N.D. Cal. Sept. 30, 2012)  
7 (“the ADA prohibits discrimination because of a disability, not inadequate treatment for a  
8 disability”); Brown v. Castillo, No. 1:02-cv-06018-LJO-DLB PC, 2007 WL 3054165 at \*16 (E.D.  
9 Cal. Oct. 19, 2007) (“plaintiff has a disability within the meaning of the ADA and the RA,  
10 however, plaintiff has not alleged that he was excluded from or denied a prison program based on  
11 his disability.”). Accordingly, the court will recommend dismissal of plaintiff’s ADA claims.

12 Finally, plaintiff asserts several state law claims, including a negligence claim against all  
13 of the defendants based on all of the alleged misconduct in his complaint. Except as already  
14 described above, the court should decline to exercise supplemental jurisdiction over plaintiff’s  
15 state law claims. See City of Chicago v. Intern. College of Surgeons, 522 U.S. 156, 172 (1997) (a  
16 federal court’s supplemental jurisdiction is governed by a doctrine of discretion, not of right); 28  
17 U.S.C. § 1367(c)(2) (a district court may decline to exercise supplemental jurisdiction if “the  
18 claim substantially predominates over the claim or claims over which the district court has  
19 original jurisdiction”).

20 State law claims are part of the same case as federal claims if they “derive from a common  
21 nucleus of operative fact and are such that a plaintiff would ordinarily be expected to try them in  
22 one judicial proceeding.” Finley v. United States, 490 U.S. 545, 549 (1989) (quoting United  
23 Mine Workers of Am. v. Gibbs, 383 U.S. 715, 725 (1966)). For example, as discussed above,  
24 plaintiff’s second amended complaint appears to state a cognizable claim under the Fourteenth  
25 Amendment against the defendants for their refusal to adhere to his medical “recommendation” or  
26 chrono. Plaintiff asserts a state law negligence claim against defendants based on the same  
27 conduct, so the court will exercise supplemental jurisdiction over these negligence claims.

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1 However, because plaintiff's other state law claims against defendants (e.g., for failure to  
 2 strap in him the police van with a safety belt) are unrelated to plaintiff's Fourteenth Amendment  
 3 claim, the undersigned finds that "economy, convenience and fairness to the parties, and comity"  
 4 are all served by dismissing plaintiff's remaining state law claims without prejudice to pursuing  
 5 them in state court. See Trustees of Constr. Indus. & Laborers Health & Welfare Trust v. Desert  
 6 Valley Landscape & Maint., Inc., 333 F.3d 923, 925 (9th Cir. 2003). See also Lopez v. Florez,  
 7 No. 1:08-CV-01975-LJO, 2011 WL 6753987, at \*5 (E.D. Cal. Dec. 23, 2011) ("Thus, because  
 8 Plaintiff's state law claims regarding the denial of medications for his back, do not share a  
 9 common nucleus of facts with his cognizable federal "deliberate indifference" claims regarding  
 10 the denial of pain medication following his surgery, the court will not extend its pendant  
 11 jurisdiction to Plaintiff's claims of negligence and malpractice regarding the treatment of his back  
 12 condition), adopted by, No. 1:08-CV-01975-LJO, 2012 WL 273363 (E.D. Cal. Jan. 30, 2012).

13 **CONCLUSION**

14 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court is directed to  
 15 randomly assign a United States District Judge to this action.

16 IT IS HEREBY RECOMMENDED that:

17 1. This case proceed on plaintiff's deliberate indifference and negligence claims against  
 18 defendants County of Sacramento, Jones, Fitch, Douglas, Steed, Harrison, Bacoeh, Gandhi,  
 19 Grgich, Carmello, Doe 12, and Doe 13<sup>2</sup> in connection with their refusal to adhere to his medical  
 20 "recommendation" or chrono stating he needed to be housed on a lower tier and avoid climbing  
 21 stairs;

22 2. Plaintiff's claims under the Americans with Disabilities Act be dismissed for failure to  
 23 state a claim;

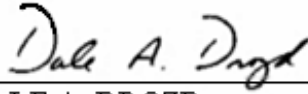
24 3. The court decline to exercise supplemental jurisdiction over any state law claims  
 25 except as stated herein; and

26 \_\_\_\_\_  
 27 <sup>2</sup> The court cannot order service of plaintiff's complaint on defendants not actually identified by  
 28 name in his second amended complaint. However, if plaintiff learns the identity of Doe 12 and  
 Doe 13 through discovery or other means, he may file a motion for leave to amend his complaint  
 to identify these defendants by name.

1           4. This matter be referred back to the assigned Magistrate Judge for service of the second  
2 amended complaint on defendants as provided herein.

3           These findings and recommendations are submitted to the District Judge assigned  
4 to this case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being  
5 served with these findings and recommendations, plaintiff may file written objections with the  
6 court. The document should be captioned “Objections to Magistrate Judge’s Findings and  
7 Recommendations.” Plaintiff is advised that failure to file objections within the specified time  
8 may waive the right to appeal the District Court’s order. See *Martinez v. Ylst*, 951 F.2d 1153  
9 (9th Cir. 1991).

10 Dated: October 29, 2015

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13 DALE A. DROZD  
14 UNITED STATES MAGISTRATE JUDGE

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