

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN D. HUNTER,  
Plaintiff,  
v.  
RON DAVIS, et al.,  
Defendants.

Case No. 16-cv-03657-JST (PR)

**ORDER OF DISMISSAL**

Plaintiff, a prisoner at San Quentin State Prison (SQSP), filed a pro se complaint under 42 U.S.C. § 1983 alleging unlawful conditions of confinement after a failure to maintain the cooling tower at the SQSP healthcare facility led to an outbreak of an infectious disease. The Court identified various deficiencies in Plaintiff's complaint and dismissed it with leave to amend. Plaintiff then filed an amended complaint, which is now before the Court for review.

**DISCUSSION**

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Pro se pleadings must, however, be liberally construed. See Balistreri v. Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir. 1988).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the

1 statement need only “ ‘give the defendant fair notice of what the . . . claim is and the grounds upon  
2 which it rests.’ ” Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although  
3 in order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s  
4 obligation to provide the grounds of his ‘entitle[ment] to relief’ requires more than labels and  
5 conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . .  
6 Factual allegations must be enough to raise a right to relief above the speculative level.” Bell  
7 Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint  
8 must proffer “enough facts to state a claim for relief that is plausible on its face.” Id. at 1974.

9 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:  
10 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that  
11 the alleged violation was committed by a person acting under the color of state law. See West v.  
12 Atkins, 487 U.S. 42, 48 (1988).

13 B. Legal Claims

14 In his amended complaint, Plaintiff alleges that staff at SQSP failed to adequately maintain  
15 the cooling tower at the SQSP healthcare facility. This led to an outbreak of Legionnaires’ disease  
16 at the prison, and plaintiff was one of approximately 100 inmates that became infected. As a  
17 result of the disease, plaintiff suffered from fatigue, headaches, muscle pain, diarrhea, shortness of  
18 breath, liver and kidney damage, and joint pain. Exhibits attached the amended complaint show  
19 that he was treated for the infection.

20 Plaintiff names as Defendants SQSP warden Ron Davis, SQSP medical executive Elena  
21 Tootell, and SQSP chief maintenance supervisor Andy Crump. Plaintiff alleges that Defendant  
22 Crump failed in his duty to maintain the cooling tower and never tested the cooling tower for  
23 legionella, and that Defendants Davis and Tootell failed in their duty to ensure the safety and  
24 welfare of all inmates.

25 Although regrettable, Plaintiff’s allegations that Defendants failed in performing their  
26 assigned duties amount to no more than a claim for negligence or gross negligence. Neither  
27 negligence nor gross negligence is actionable under § 1983 in the prison context. See Farmer v.  
28 Brennan, 511 U.S. 825, 835-36 & n.4 (1994). The applicable standard is one of deliberate

1 indifference to inmate health or safety under the Eighth Amendment, see Farmer, 511 U.S. at 834;  
2 Wilson v. Seiter, 501 U.S. 294, 302 (1991). The amended complaint, like the original complaint  
3 fails to satisfy the subjective prong of an Eighth Amendment claim in that it does not allege facts  
4 suggestive of deliberate indifference by prison officials to a known risk to Plaintiff's health or  
5 safety. There is no indication that the omissions at issue were intentional or anything more than  
6 isolated occurrences of negligence or gross negligence by SQSP staff. This may be enough for  
7 Plaintiff to pursue a negligence claim in state court, but it is not enough to state a deliberate  
8 indifference claim under § 1983 in federal court.

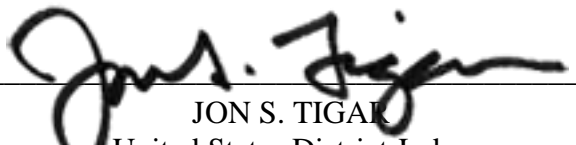
9 Accordingly, the action must be dismissed for failure to state a federal claim. Further  
10 leave to amend will not be granted because the Court already has explained to Plaintiff the specific  
11 deficiencies in his pleadings, and he has been unable to correct them. However, the dismissal is  
12 without prejudice to re-filing in state court based on an alleged violation of state law.

13 **CONCLUSION**

14 For the foregoing reasons, this action is DISMISSED for failure to state a claim upon  
15 which relief may be granted. The Clerk shall terminate all pending motions, enter judgment, and  
16 close the file.

17 IT IS SO ORDERED.

18 Dated: February 27, 2017

19   
20 \_\_\_\_\_  
21 JON S. TIGAI  
22 United States District Judge  
23  
24  
25  
26  
27  
28