

1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 JAMES WILLIAM COVERT,

No. C 06-6626 SBA (PR)

4 Plaintiff,

**ORDER DISMISSING CLAIMS OF  
 SUPERVISORY LIABILITY,  
 DELIBERATE INDIFFERENCE, EQUAL  
 PROTECTION VIOLATIONS, AND DUE  
 PROCESS VIOLATIONS**

5 v.

6 D. GRAHAM, et al.,

7 Defendants.  
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10 On August 31, 2009, the Court issued an Order of Service and directed Plaintiff to amend his  
 11 claims of supervisory liability, deliberate indifference, equal protection violations, and due process  
 12 violations. The Court gave Plaintiff until September 30, 2009 to file an amendment to the  
 13 complaint. He was warned the failure to do so would result in dismissal of the aforementioned  
 14 claims without prejudice.

15 Thereafter, Plaintiff filed his amendment to the complaint. In the amendment, Plaintiff again  
 16 names multiple supervisors, such as the SQSP Warden and SQSP Acting Warden as the Doe  
 17 Defendants, and states that these Defendants "were responsible for ensuring that inmates received  
 18 proper safety and protection from injury . . . [and that these Defendants] should have been aware of  
 19 the deplorable, dangerous, and life-threatening conditions at Unit V." (Am. to Compl. at 3.)  
 20 Plaintiff also alleges that other supervisory Defendants from the medical staff, including the Chief  
 21 Medical Officer (CMO) as a Doe Defendant, were "responsible for the medical care of all inmates."  
 22 (Id. at 5.) In addition, the CMO was "responsible for the supervision, direction and/or proper  
 23 training of the medical staff at SQ in the delivery of health care services and the management of  
 24 health care programs." (Id. at 6.) Plaintiff does not provide any facts to support his allegation that  
 25 he directly contacted these supervisory Defendants regarding his alleged fall on April 16, 2005 due  
 26 to ill-fitting shoes. Therefore, the Court construes his allegation to mean that he only had direct  
 27 contact with Defendants Harrison and Graham, both of whom he claims were not properly  
 28 supervised by these supervisory Defendants. This is a respondeat superior claim, that is, Plaintiff

1 seeks to hold these supervisory Defendants liable because they were the supervisors of the persons  
2 he contends violated his rights. This is, however, not a proper basis for Section 1983 liability. See  
3 Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Therefore, nothing in the amendment is  
4 sufficient to overcome the deficiency of his claim against these supervisory Defendants, which gave  
5 rise to the dismissal with leave to amend.

6 Plaintiff also fails to correct the deficiencies of his other remaining claims. In his  
7 amendment to the complaint, he again alleges conclusory claims with no factual support, stating:  
8 "Plaintiff was routinely denied access to CDCR medical request forms . . . [and] [o]n one occasion,  
9 Plaintiff was seen by a nurse and complaint of sever pain. Despite a dangerously high blood  
10 pressure of 195/115, Plaintiff was not seen by a doctor for over two months." (Am. Compl. at 6.)  
11 These conclusory allegations are not sufficient to state a "plausible" claim that Plaintiff's  
12 constitutional rights were violated. While Plaintiff attempts to give general examples of the "bad"  
13 conditions at SQSP, he has failed to give more specific allegations showing how he was affected by  
14 such conditions, during which time frame he was affected, and who was responsible for each  
15 constitutional violation he alleges. Again, the Court is unable to find that his allegations state  
16 cognizable claims of deliberate indifference to his serious medical needs, equal protection violations  
17 and due process violations. Therefore, nothing in the amendment is sufficient to overcome the  
18 deficiencies of these claims, which gave rise to their dismissal with leave to amend.

19 Accordingly, IT IS HEREBY ORDERED that Plaintiff's claims of supervisory liability,  
20 deliberate indifference, equal protection violations, and due process violations are dismissed without  
21 further leave to amend.

22 IT IS SO ORDERED.

23 DATED: 11/30/09

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5  
6 JAMES WILLIAM COVERT,  
7 Plaintiff,

Case Number: CV06-06626 SBA

**CERTIFICATE OF SERVICE**

8 v.

9 D. GRAHAM et al,

10 Defendant.  
11 \_\_\_\_\_/

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
13 Court, Northern District of California.

14 That on December 4, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said  
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
16 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
17 located in the Clerk's office.

18 James W. Covert D-86333  
19 Pleasant Valley State Prison  
20 P.O. Box 8503  
21 Coalinga, CA 93210

22 Dated: December 4, 2009

Richard W. Wiekling, Clerk  
By: LISA R CLARK, Deputy Clerk

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