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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

GARY DICKEY,  
  
Plaintiff,  
  
v.  
  
D. STRAYHORN and D. PARAMO,  
  
Defendant.

Case No.: 17-CV-546 JLS (JLB)

**ORDER: (1) ADOPTING REPORT &  
RECOMMENDATION; AND  
(2) GRANTING DEFENDANT D.  
PARAMO’S MOTION TO DISMISS**

(ECF Nos. 22, 35)

Presently before the Court is Magistrate Judge Jill L. Burkhardt’s Report and Recommendation, (“R&R,” ECF No. 35), recommending that the Court grant Defendant D. Paramo’s Motion to Dismiss, (ECF No. 22). No party filed an objection or a reply to Judge Burkhardt’s R&R. For the following reasons, the Court (1) **ADOPTS** Judge Burkhardt’s R&R in its entirety and (2) **GRANTS** Defendant’s Motion to Dismiss, (ECF No. 22).

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1 **BACKGROUND**

2 Judge Burkhardt’s R&R contains a thorough and accurate recitation of the factual  
3 and procedural histories underlying the instant Motion to Dismiss. (*See* R&R 2–4.)<sup>1</sup> This  
4 Order incorporates by reference the background as set forth therein.

5 **LEGAL STANDARD**

6 Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district  
7 court’s duties regarding a magistrate judge’s report and recommendation. The district court  
8 “shall make a de novo determination of those portions of the report . . . to which objection  
9 is made,” and “may accept, reject, or modify, in whole or in part, the findings or  
10 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(c); *see also*  
11 *United States v. Raddatz*, 447 U.S. 667, 673–76 (1980); *United States v. Remsing*, 874 F.2d  
12 614, 617 (9th Cir. 1989). In the absence of a timely objection, however, “the Court need  
13 only satisfy itself that there is no clear error on the face of the record in order to accept the  
14 recommendation.” Fed. R. Civ. P. 72 advisory committee’s note (citing *Campbell v. U.S.*  
15 *Dist. Court*, 510 F.2d 196, 206 (9th Cir. 1974)); *see also United States v. Reyna-Tapia*, 328  
16 F.3d 1114, 1121 (9th Cir. 2003) (“[T]he district judge must review the magistrate judge’s  
17 findings and recommendations de novo *if objection is made*, but not otherwise.”).

18 **ANALYSIS**

19 As discussed, neither Plaintiff nor Defendant filed an objection or a reply to Judge  
20 Burkhardt’s R&R. Plaintiff’s objections were due February 12, 2018—none were filed.  
21 (R&R 14.) And, after review of the moving papers and Judge Burkhardt’s R&R, the Court  
22 finds “that there is no clear error on the face of the record” and thus the Court may “accept  
23 the recommendation.” Fed. R. Civ. P. 72 advisory committee’s note (citing *Campbell*, 510  
24 F.2d at 206). Plaintiff brings claims, under 42 U.S.C. § 1983, against corrections officers  
25 and the warden at R.J. Donovan Correctional Facility. Defendants’ Motion to Dismiss  
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<sup>1</sup> Pin citations to docketed material refer to the CM/ECF numbers electronically stamped at the top of each page.

1 only concerns Warden Paramo’s liability. The Court agrees with Judge Burkhardt that  
2 Plaintiff has failed to allege sufficient facts that demonstrate liability under 42 U.S.C.  
3 § 1983 on the part of Warden Paramo. A defendant may be liable as a supervisor “if there  
4 exists either (1) his or her personal involvement in the constitutional deprivation, or (2) a  
5 sufficient causal connection between the supervisor’s wrongful conduct and the  
6 constitutional violation.” *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011) (quoting  
7 *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989)). Thus, personal, supervisory liability  
8 “exists even without overt personal participation in the offensive act if supervisory officials  
9 implement a policy so deficient that the policy itself is a repudiation of constitutional rights  
10 and is the moving force of the constitutional violation.” *Hansen*, 885 F.2d at 646 (internal  
11 quotation marks omitted). Judge Burkhardt’s R&R evaluated Plaintiff’s claims against  
12 Warden Paramo as to personal participation and policy implementation theories of liability.  
13 The Court reviews each theory in turn.

14 First, Judge Burkhardt concludes that Plaintiff’s Complaint fails to state a claim  
15 under a personal, vicarious liability theory. (*See* R&R 10.) The only allegation in  
16 Plaintiff’s Complaint against Warden Paramo is: “he lets these officers treat us any kind of  
17 way. They are known for slamming inmates to the ground when their [sic] cuffed up.” (*Id.*  
18 at 4 (quoting Compl., ECF No. 1, at 2).) Plaintiff also attached several CDCR Form 22’s<sup>2</sup>  
19 to his Complaint, which contained allegations such as: “You [Warden Paramo] know that  
20 the officers here are slamming people on the ground when we are cuffed up. Then they lie  
21 and say we attacked them first and thats [sic] why a few of your officers have complaints  
22 against them. And you are very aware of what your officers are doing too [sic] us. And  
23 you don’t do nothing about it.” (*Id.* (alteration in original) (quoting Compl. 16).)

24 The Court agrees with Judge Burkhardt that liability under section 1983 is based  
25 only on the defendant’s individual actions—not vicarious liability. (*Id.* at 10 (citing  
26 *Ashcroft v. Iqbal*, 556 U.S. 662, 676–77 (2009); and *Starr*, 652 F.3d at 1207).) Plaintiff  
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28 <sup>2</sup> CDCR Form 22 is an Inmate/Parolee Request for Interview, Item or Service. (*See* Compl. 15.)

1 has not alleged sufficient facts to demonstrate Warden Paramo’s personal involvement in  
2 the incidents in his Complaint. The allegations only speak to what Warden Paramo  
3 supposedly knew about his officers—not that Warden Paramo was personally involved.

4 Second, the Court also agrees with Judge Burkhardt that Plaintiff’s deliberate  
5 indifference theory against Warden Paramo fails because Plaintiff’s Complaint does not  
6 allege a “sufficient causal connection” between the alleged wrongful conduct and a  
7 constitutional violation committed by his subordinates. (*Id.* (citing *Farmer v. Brennan*,  
8 511 U.S. 825, 834 (1994); *Starr*, 652 F.3d at 1205–07).) Plaintiff does not include factual  
9 allegations that would allow the Court to find Plaintiff’s Complaint states a claim for relief,  
10 plausible on its face. Instead, Plaintiff’s Complaint and its exhibits only contain bald and  
11 conclusory allegations—“You know that the officers here are slamming people on the  
12 ground when cuffed up . . . you are very aware of what your officers are doing too [sic]  
13 us,” (Compl. 16). Plaintiff does not include factual allegations that Warden Paramo knew  
14 of unconstitutional conduct and acquiesced in that conduct. (*See* R&R 13.) Therefore, the  
15 Court finds no clear error in Judge Burkhardt’s R&R.

16 Accordingly, the Court **ADOPTS** Judge Burkhardt’s R&R in its entirety and  
17 **GRANTS** Defendant’s Motion to Dismiss.

### 18 **CONCLUSION**

19 For the foregoing reasons, the Court (1) **ADOPTS** Judge Burkhardt’s R&R in its  
20 entirety, and (2) **GRANTS** Defendant’s Motion to Dismiss as to Warden Paramo, (ECF  
21 No. 22). The Court agrees with Judge Burkhardt’s recommendation to dismiss Plaintiff’s  
22 Eighth Amendment claims without prejudice. The Complaint’s deficiencies could be cured  
23 by factual allegations addressing Judge Burkhardt’s findings. Therefore, the Court  
24 **DISMISSES WITHOUT PREJUDICE** Plaintiff’s Eighth Amendment cause of action  
25 against Defendant Paramo. If Plaintiff wishes to re-allege his claims against Warden  
26 Paramo, Plaintiff may file an amended complaint within thirty (30) days from the date  
27 which this Order is electronically filed. Plaintiff is cautioned that should he choose to file  
28 a First Amended Complaint, it must be complete by itself, comply with Federal Rule of

1 Civil Procedure 8(a), and that any claim, against any and all defendant not re-alleged will  
2 be considered waived. *See Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012)  
3 (noting that claims dismissed with leave to amend which are not re-alleged in an amended  
4 pleading may be “considered waived if not repleaded”).

5 **IT IS SO ORDERED.**

6 Dated: March 8, 2018

  
7 Hon. Janis L. Sammartino  
8 United States District Judge

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