

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 JOHN WESLEY WILLIAMS,
12 CDCR #V-34099,

13 Plaintiff,

14 v.

15 WILLIAM M. POLLARD, et al.,

16 Defendants.
17
18

Case No.: 21-cv-0055-RSH-BGS

**ORDER ON MOTION TO DISMISS
BY DEFENDANTS MADDEN,
ROBERTS, AND GLYNN**

[ECF No. 57]

19 Plaintiff John Wesley Williams filed this action pursuant to 42 U.S.C. § 1983
20 alleging that officials at the Richard J. Donovan Correctional Facility (“RJD”) violated his
21 Eighth Amendment rights. Plaintiff’s Second Amended Complaint (“SAC”), filed on
22 February 4, 2022, is the operative complaint. ECF No. 42. Three of the Defendants – R.
23 Madden, S. Roberts, and M. Glynn – have moved to dismiss the SAC against them based
24 on failure to state a claim (the “Motion”). ECF No. 57. The Motion is fully briefed. ECF
25 Nos. 64, 66. As explained further below, the Court grants the Motion.

26 **I. Background**

27 Plaintiff initiated this action by filing a *pro se* civil rights Complaint on January 1,
28 2021, accompanied by an application to proceed *in forma pauperis*, naming as Defendants

1 RJD Warden Pollard and three others. ECF Nos. 1-2. On May 5, 2020, the Court granted
2 Plaintiff leave to proceed *in forma pauperis*, screened the Complaint pursuant to 28 U.S.C.
3 §§ 1915(e)(2) and 1915A(b), and directed service as to all four Defendants. ECF No. 4.

4 On May 28, 2021, Defendants filed a motion to dismiss the original Complaint. ECF
5 No. 12. Plaintiff filed his First Amended Complaint (“FAC”) on August 24, 2021, dropping
6 one of the original Defendants but adding four new ones. ECF No. 19. On September 7,
7 2021, Defendants withdrew their motion to dismiss the original Complaint and filed a
8 motion to dismiss the FAC. ECF No. 21.

9 On January 19, 2022, the Court granted in part and denied in part the motion to
10 dismiss, dismissing the FAC against all defendants except Pollard, and granting Plaintiff
11 leave to amend. ECF No. 40. On February 4, 2022, Plaintiff filed the SAC. ECF No. 42.

12 The SAC names six RJD defendants: (1) RJD Warden Pollard, (2) Warden R.
13 Madden, (3) Chief Medical Executive S. Roberts, (4) CEO M. Glynn, (5) Chief Deputy
14 Warden R. Buckel, and (6) Correctional Sergeant Navarro. Of these, Pollard, Buckel, and
15 Navarro had previously been named as defendants, and have appeared in this action, ECF
16 No. 44; the other three Defendants, newly added, filed the Motion at issue in this Order.

17 In the SAC, Plaintiff alleges as follows. He has pre-existing health conditions which
18 place him at a heightened risk of death or severe illness if infected with COVID-19. ECF
19 No. 42 at 4. While incarcerated at RJD, Defendants were deliberately indifferent to his risk
20 of exposure to the virus in violation of the Eighth Amendment. RJD staff: (1) provided
21 poor quality masks to inmates and to RJD staff, and some staff refused to wear masks at
22 all; (2) failed to properly sanitize the housing unit or enforce social distancing guidelines;
23 (3) refused to separate infected from non-infected inmates, and housed Plaintiff with an
24 inmate who tested positive for the virus for one night in December 2020, intimidating
25 Plaintiff into agreeing to the arrangement; and (4) ignored grievances filed by Plaintiff. *Id.*
26 at 4-10, 12-16. As a result, Plaintiff suffered panic attacks and other ongoing physical and
27 emotional distress, as well as chest pains and loss of taste and smell; and he ultimately
28 tested positive for COVID-19, requiring quarantine from January 19, 2022 to January 25,

1 2022. *Id.* at 7, 14, 16. Plaintiff’s symptoms while infected were severe, but have largely
2 passed; now he is left with lingering mucus in his chest. *Id.* at 16. Plaintiff seeks damages,
3 and an injunction to prevent ongoing deliberate indifference to COVID-19 exposure. *Id.* at
4 20.

5 **II. Legal Standard**

6 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) “tests the legal
7 sufficiency of a claim.” *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). “To survive
8 a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to
9 ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
10 (2009), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

11 A claim is facially plausible “when the plaintiff pleads factual content that allows
12 the court to draw the reasonable inference that the defendant is liable for the misconduct
13 alleged.” *Iqbal*, 556 U.S. at 678. Plausibility requires pleading facts, as opposed to
14 conclusory allegations or the “formulaic recitation of the elements of a cause of action.”
15 *Twombly*, 550 U.S. at 555. The factual allegations must rise above the mere conceivability
16 or possibility of unlawful conduct. *Iqbal*, 556 U.S. at 678-79. “Factual allegations must be
17 enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555.
18 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
19 statements, do not suffice.” *Iqbal*, 556 U.S. at 678. “[F]or a complaint to survive a motion
20 to dismiss, the non-conclusory ‘factual content,’ and reasonable inferences from that
21 content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v.*
22 *U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009), quoting *Iqbal*, 556 U.S. at 678.

23 Title 42 U.S.C. § 1983 “creates a private right of action against individuals who,
24 acting under color of state law, violate federal constitutional or statutory rights.” *Devereaux*
25 *v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 “is not itself a source of
26 substantive rights, but merely provides a method for vindicating federal rights elsewhere
27 conferred.” *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (internal quotation marks
28 omitted). To state a § 1983 claim, a plaintiff must plausibly allege that (1) the acts of

1 Defendants (2) taken under color of state law (3) deprived him of his federal rights,
2 privileges or immunities and (4) caused him damage. *Thornton v. City of St. Helens*, 425
3 F.3d 1158, 1163-64 (9th Cir. 2005).

4 The Eighth Amendment’s cruel and unusual punishments clause is violated when
5 prison officials are deliberately indifferent to a prisoner’s serious medical needs. *Estelle v.*
6 *Gamble*, 429 U.S. 97, 102-05 (1976). To establish deliberate indifference, a prisoner must
7 allege facts from which a trier of fact might reasonably conclude that the treatment he
8 received placed him at risk of “objectively, sufficiently serious” harm, and that a prison
9 official had a “sufficiently culpable state of mind” when they provided or denied medical
10 care. *Wallis v. Baldwin*, 70 F.3d 1074, 1076 (9th Cir. 1995). A plaintiff must show that
11 defendants knew of and disregarded “an excessive risk to inmate health or safety; the
12 official must both be aware of the facts from which the inference could be drawn that
13 substantial risk of serious harm exists, and he must also draw the inference.” *Farmer v.*
14 *Brennan*, 511 U.S. 825, 837 (1994).

15 **III. Analysis**

16 Here, newly added defendants Madden, Roberts, and Glynn argue in the Motion that
17 the SAC – regardless whether it states an Eighth Amendment claim against one or more of
18 the other Defendants – fails to state a claim against the three of them. Defendants argue
19 that the SAC “attributes no specific conduct to Roberts, Glynn, and Madden,” but instead
20 seeks to hold them responsible without pleading facts that would establish unlawful
21 conduct by them. ECF No. 57 at 4.

22 Defendants’ characterization of the SAC is accurate. The SAC alleges in general
23 terms that each of them, like the other Defendants, “acted with deliberate indifference by
24 failing to adequately protect Plaintiff from COVID-19 infection exposure.” ECF No. 42 at
25 2-3. Plaintiff alleges that in mid-2020, he complained that Roberts and Glynn (along with
26 other Defendants) issued “generic face masks of poor quality.” *Id.* at 4. He alleges that
27 Madden (along with other Defendants) played a role in RJD’s grievance process in general.
28 *Id.* at 5. He also alleges that Madden, Roberts, and Glynn (among other Defendants) failed

1 to separate infected and non-infected inmates. *Id.* at 6, 10, 15. He further alleges that
2 Roberts and Glynn (among other Defendants) practiced poor sanitation through the
3 pandemic. *Id.* at 14.

4 District courts have held that similar allegations fail to state a claim where they fail
5 to allege facts showing how each defendant is responsible. *See Swan v. R.J. Donovan C.F.*,
6 No. 21-CV-1455-JLS-MDD, 2022 WL 2134605 (S.D. Cal. June 14, 2022) (holding that a
7 complaint failed to state a claim, despite alleging that the defendant prison officials were
8 personally aware of his medical vulnerabilities and took no action in response to his
9 grievances, where it failed to plausibly allege facts supporting defendants’ personal role in
10 causing harm to the plaintiff and supporting their deliberate indifference to the plaintiff’s
11 health or safety); *Flourney v. Does 1-15*, No. 3:21-CV01767-CAB-BGS, 2022 WL
12 254568, at *3-*4 (S.D. Cal. Jan. 27, 2022) (holding that a complaint failed to state a claim,
13 despite alleging that the plaintiff’s infection resulted from prison officials’ failure to
14 sufficiently enforce COVID-19 guidelines in his housing unit, because complaint did not
15 set forth specific facts as to “each individual defendant’s wrongdoing”); *Acuna v. Pollard*,
16 No. 21-CV-1910-LL-AGS, 2022 WL 184659, at *2-*4 (S.D. Cal. Jan. 20, 2022) (holding
17 that a complaint failed to state a claim, despite alleging that the plaintiff’s infection resulted
18 from prison officials’ “fail[ure] to implement proper protocol,” because the complaint did
19 not contain individualized allegations against each of the eight defendants); *McKissick v.*
20 *Gastelo*, No. 2:21-CV-01945-VAP-MAA, 2021 WL 2895679, at *5 (C.D. Cal. July 9,
21 2021) (“[T]o state a cognizable Eighth Amendment claim, Plaintiff must provide more than
22 generalized allegations that Defendants have not done enough to enforce six-foot social and
23 living distancing, or provided sufficient cleaning supplies, in order to control the spread of
24 COVID-19. . . . Plaintiff fails to allege facts showing how each Defendant specifically
25 was responsible for such failings, or allege a causal link between each Defendant and the
26 claimed constitutional violation.”)

27 Similar to the cases cited above, Plaintiff’s allegations against Madden, Roberts, and
28 Glynn do not support an inference of personal participation and deliberate ignorance as to

1 each of them, and therefore fail to state a claim. *See also Jones v. Williams*, 297 F.3d 930,
2 934 (9th Cir. 2002) (“In order for a person acting under color of state law to be liable under
3 section 1983 there must be a showing of personal participation in the alleged rights
4 deprivation: there is no respondeat superior liability under section 1983”); *Leer v. Murphy*,
5 844 F.2d 628, 634 (9th Cir. 1988) (a prisoner must allege “(1) that the specific prison
6 official, in acting or failing to act, was deliberately indifferent to the mandates of the eighth
7 amendment and (2) that this indifference was the actual and proximate cause of the
8 deprivation of the inmates’ eighth amendment right to be free from cruel and unusual
9 punishment.”).

10 Plaintiff’s Opposition argues that Roberts and Glynn, in response to one of
11 Plaintiff’s grievances, ordered a medical quarantine that ultimately resulted in Plaintiff
12 being housed together with an infected inmate in December 2020. ECF No. 64 at 2-3.
13 Plaintiff contends that these allegations are sufficient to show their deliberate ignorance.
14 ECF No. 64 at 4-5. But as Defendants point out in their Reply, this allegation against
15 Roberts and Glynn is not contained in the SAC, which instead blames the decision to house
16 Plaintiff with an infected inmate on Defendant Navarro’s desire to get home for Christmas
17 dinner. ECF No. 66 at 2; ECF No. 42 at 8. Plaintiff also argues that Roberts and Glynn
18 signed off on a grievance response document that conceded (after the fact) that Plaintiff
19 had reportedly been celled with an infected inmate on December 25, 2020.¹ ECF No. 64 at
20 2-3. This too, falls short of pointing to allegations in the SAC that would plausibly establish
21 their liability for violating Plaintiff’s Eighth Amendment rights. Plaintiff’s Opposition does
22 not even mention defendant Madden. ECF No. 64.

23
24
25
26
27
28 ¹ The referenced document appears to be Exhibit D to the SAC, ECF No. 42-4 at 11-13.

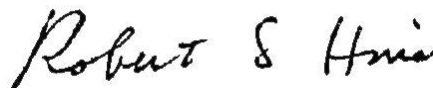
1 **IV. Conclusion**

2 For the above reasons, the Court GRANTS the motion to dismiss of Defendants
3 Madden, Roberts, and Glynn. The Second Amended Complaint is DISMISSED as to each
4 of these three defendants.²

5 The Motion does not address whether Plaintiff should be granted leave to amend in
6 the event of a dismissal. Because Plaintiff may be able to cure the pleading defects against
7 Madden, Roberts, and Glynn, this dismissal is without prejudice and he is granted leave to
8 amend as to those Defendants. *See Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015)
9 (“A district court should not dismiss a pro se complaint without leave to amend unless ‘it
10 is absolutely clear that the deficiencies of the complaint could not be cured by
11 amendment.’”) (quoting *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012)). The Court
12 therefore GRANTS Plaintiff leave to file a Third Amended Complaint within thirty (30)
13 days from the date this Order is filed if he wishes to do so. The Third Amended Complaint
14 must be complete by itself without reference to any original pleading. Defendants not
15 named and any claim not re-alleged will be considered waived. If Plaintiff does not timely
16 file a Third Amended Complaint, this action will proceed against the remaining
17 Defendants, namely Pollard, Buckel, and Navarro.

18 **SO ORDERED.**

19 Dated: November 9, 2022.



Hon. Robert S. Huie
United States District Judge

20
21
22
23
24
25
26
27 ² In granting Defendants’ Motion based on failure to sufficiently allege a
28 constitutional violation, the Court does not rule on Defendants’ alternative argument based
on qualified immunity.