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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

MICHAEL RHYMES,

Plaintiff,

v.

NEVADA DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

3:15-cv-00592-RCJ-VPC

**REPORT AND RECOMMENDATION**  
**OF U.S. MAGISTRATE JUDGE**

This Report and Recommendation is made to the Honorable Robert C. Jones, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. Before the court is defendants' partial motion to dismiss (ECF No. 32). Plaintiff opposed (ECF No. 35), and defendants replied (ECF No. 37). For the reasons stated below, the court recommends that defendants' motion to dismiss (ECF No. 32) be granted.

**I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

Michael Rhymes ("plaintiff") is an inmate in the custody of the Nevada Department of Corrections ("NDOC"), and currently housed at Northern Nevada Correctional Center ("NNCC") in Carson City, Nevada. Pursuant to 42 U.S.C. § 1983, plaintiff brings a civil rights claim against various NDOC and NNCC officials.

On August 3, 2016, the District Court screened plaintiff's first amended complaint and determined that he could proceed with his Eighth Amendment deliberate indifference claim against defendant Cynthia Sablinca. (ECF No. 6 at 10.) Plaintiff's claim against defendants Romeo Aranas and Warden Nash were dismissed with prejudice, as the Court found that plaintiff failed to allege actual knowledge of the alleged unconstitutional conduct by those defendants. (See *id.*)

On March 31, 2017, plaintiff filed a motion to amend his complaint. (ECF No. 22.) Defendants did not oppose the motion, and the court granted plaintiff leave to file a second amended complaint ("SAC"). (ECF No. 25.) The SAC names as defendants, Romeo Aranas, Greg Cox,

1 D.W. Neven, Cynthia Sablinca, and John/Jane Does 1-5, and brings an Eighth Amendment  
2 deliberate indifference claim relating to a denial or delay in providing plaintiff medication. (ECF  
3 No. 26.) On June 13, 2017, defendants Aranas and Cox filed a partial motion to dismiss asserting  
4 that plaintiff failed to allege personal participation by the defendants and that defendants are entitled  
5 to qualified immunity. (ECF No. 32.) This report and recommendation follows.

## 6 **II. LEGAL STANDARD**

7 Dismissal of a complaint for failure to state a claim upon which relief may be granted is  
8 provided for in Federal Rule of Civil Procedure 12(b)(6). The ruling is a question of law. *N. Star*  
9 *Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 580 (9th Cir. 1983). The court is to grant dismissal  
10 when the complaint fails to “state a claim for relief that is plausible on its face[.]” *Bell Atl. Corp.*  
11 *v. Twombly*, 550 U.S. 544, 570 (2007), or fails to articulate a cognizable legal theory, *Taylor v.*  
12 *Yee*, 780 F.3d 928, 935 (9th Cir. 2015). When analyzing a motion under Rule 12(b)(6), courts  
13 accept as true all well-pled factual allegations, set aside legal conclusions, and verify that the  
14 complaint states a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). While  
15 detailed factual allegations are not necessary, the complaint must offer more than “a formulaic  
16 recitation of the elements of a cause of action,” *Twombly*, 550 U.S. at 555, and include sufficient  
17 facts “to give fair notice and to enable the opposing party to defend itself effectively,” *Starr v.*  
18 *Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). In conducting the dismissal analysis, the complaint is  
19 construed in a light most favorable to the plaintiff. *Chubb Custom Ins. Co. v. Space Sys./Loral*  
20 *Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). Moreover, the court takes particular care when reviewing  
21 the pleadings of a pro se party, for a more forgiving standard applies to litigants not represented  
22 by counsel. *Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010).

## 23 **III. DISCUSSION**

### 24 **A. Civil Rights Claims Under § 1983**

25 42 U.S.C. § 1983 aims “to deter state actors from using the badge of their authority to  
26 deprive individuals of their federally guaranteed rights.” *Anderson v. Warner*, 451 F.3d 1063,  
27 1067 (9th Cir. 2006) (quoting *McDade v. West*, 223 F.3d 1135, 1139 (9th Cir. 2000)). The statute  
28

1 “provides a federal cause of action against any person who, acting under color of state law,  
2 deprives another of his federal rights[,]” *Conn v. Gabbert*, 526 U.S. 286, 290 (1999), and therefore  
3 “serves as the procedural device for enforcing substantive provisions of the Constitution and  
4 federal statutes,” *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Claims under § 1983  
5 require a plaintiff to allege (1) the violation of a federally-protected right by (2) a person or official  
6 acting under the color of state law. *Warner*, 451 F.3d at 1067. Further, to prevail on a § 1983  
7 claim, the plaintiff must establish each of the elements required to prove an infringement of the  
8 underlying constitutional or statutory right.

9 **B. Personal Participation**

10 In his SAC, plaintiff alleges that defendants Aranas and Cox, failed to adequately fund the  
11 medical departments of NDOC facilities, thereby failing to ensure that plaintiff received adequate  
12 medical care. (See ECF No. 26 at 6.) Defendants contend that plaintiff’s claim against defendants  
13 Aranas and Cox must be dismissed because plaintiff fails to allege personal participation. (ECF  
14 No. 32 at 3-4.) The court agrees; plaintiff’s assertions are insufficient to state a claim.

15 “Government officials may not be held liable for the unconstitutional conduct of their  
16 subordinates under a theory of respondeat superior.” *Iqbal*, 556 U.S. at 676. However, an official  
17 acting in a supervisory capacity may be liable if he or she was personally involved in a  
18 constitutional deprivation, or there is a sufficient causal connection between his or her wrongful  
19 conduct and the deprivation. *Henry A. v. Willden*, 678 F.3d 991, 1004–05 (9th Cir. 2012) (citing  
20 *Starr v. Baca*, 652 F.3d 1202 (9th Cir. 2011)). Such wrongful conduct may include ““action or  
21 inaction in the training, supervision, or control of his [or her] subordinates . . . .”” *Id.* (quoting  
22 *Watkins v. City of Oakland*, 145 F.3d 1087, 1083 (9th Cir. 1998)).

23 To survive a 12(b)(6) motion to dismiss, a plaintiff must provide more than “a formulaic  
24 recitation of the elements of a cause of action. . . . Factual allegations must be enough to raise a  
25 right to relief above the speculative level, on the assumption that all the allegations in the complaint  
26 are true (even if doubtful in fact).” *Twombly*, 550 U.S. at 553 (internal citations and quotations  
27 omitted).

1 Here, it is clear that plaintiff names defendants Aranas and Cox merely because they hold  
2 supervisory positions. Plaintiff's formulaic assertions fail to include specific facts to show that  
3 either of the defendants knew of plaintiff's serious medical need and disregarded it, that NDOC  
4 medical departments were suffering from a lack of funding, or that defendants approve the medical  
5 department budget. The SAC merely states that Aranas and Cox breached their duties by failing  
6 to provide adequate funding to the medical department. Plaintiff's conclusory assertions fail  
7 under Rule 12(b)(6).

8 Accordingly, the court finds that plaintiff fails to allege personal participation by  
9 defendants Aranas and Cox, and therefore recommends that defendants' partial motion to dismiss  
10 be granted.

11 Because this court finds that plaintiff failed to allege personal participation, it need not  
12 address defendants' qualified immunity defense.

#### 13 IV. CONCLUSION

14 For good cause appearing and for the reasons stated above, the court recommends that  
15 defendants' partial motion to dismiss (ECF No. 32) be granted.

16 The parties are advised:

17 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of Practice,  
18 the parties may file specific written objections to this Report and Recommendation within fourteen  
19 days of receipt. These objections should be entitled "Objections to Magistrate Judge's Report and  
20 Recommendation" and should be accompanied by points and authorities for consideration by the  
21 District Court.

22 2. This Report and Recommendation is not an appealable order and any notice of  
23 appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's  
24 judgment.

#### 25 V. RECOMMENDATION

26 **IT IS THEREFORE RECOMMENDED** that defendants' partial motion to dismiss (ECF  
27 No. 32) be **GRANTED**.

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**IT IS FURTHER RECOMMENDED** that defendants Aranas and Cox be **DISMISSED**  
from this action.

**DATED:** August 30, 2017.

  

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**UNITED STATES MAGISTRATE JUDGE**