

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
CALIFORNIA**

**Abdul Howard v. Unknown**

Howard v. Unknown · No. 1:24-cv-00429-KES-SAB (PC) · Decided August 25, 2025

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**OPINION**

(PC) Howard v. Unknown

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

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11 ABDUL HOWARD, No. 1:24-cv-00429-KES-SAB (PC)

12 Plaintiff, ORDER ADOPTING FINDINGS AND

RECOMMENDATIONS TO DISMISS

13 v. ACTION FOR FAILURE TO STATE A

CLAIM

14 UNKNOWN,

Doc. 25 15 Defendant. 16 17 Plaintiff Abdul Howard is proceeding pro se and in forma pauperis on his second 18 amended complaint (“SAC”) filed pursuant to *Bivens v. Six Unknown Named Agents of Fed. 19 Bureau of Narcotics*, 403 U.S. 388 (1971). The matter was referred to a United States magistrate 20 judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 21 On January 23, 2025, the assigned magistrate judge screened the SAC and issued findings 22 and recommendations, recommending that this action be dismissed for failure to state a 23 cognizable claim upon which relief may be granted. Doc. 25. Those findings and 24 recommendations were served on plaintiff and contained notice that any objections thereto were 25 to be filed within fourteen (14) days after service. *Id.* at 9. Plaintiff filed objections on February 26 13, 2025. Doc. 26. 27 /// 28 1 In his objections, plaintiff states that he was subjected to cruel treatment because, as an 2 inmate serving a life sentence, he did not receive the same compensation benefits following a slip 3 and fall accident as provided to inmates not serving such a sentence, who are eligible for inmate 4 compensation. *Id.* at 1. Plaintiff contends that because he was not afforded these same benefits, 5 he returned to the jail in a worse condition after receiving surgery and spending fifty or more days 6 in the hospital. *Id.* He asserts that he was denied transfer to a medical facility because he is 7 serving a life sentence and that “the Region denies everything the doctors here ask for.” *Id.* at 1– 8 2. Plaintiff states that he will refuse subsequent surgeries, while recognizing his need for them, 9 because the first surgery worsened his condition and many of his constitutional rights

were 10 violated in the process of not being in a medical facility. *Id.* at 2. Plaintiff claims inmates are 11 being denied proper medical treatment in violation of equal protection and that, in denying him 12 medication and transfer to a medical facility, “Region/USA” is responsible for violations of 13 plaintiff’s Eighth Amendment right to be free from cruel and unusual punishment. *Id.* 14 Plaintiff’s objections fail to meaningfully address the deficiencies identified in the 15 findings and recommendations. A claim under the Eighth Amendment has two components. 16 *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004). First, the objective component requires a 17 “sufficiently serious” deprivation, that is, one that “result[s] in the denial of ‘the minimal civilized 18 measure of life’s necessities.’” *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (first quoting 19 *Wilson v. Seiter*, 501 U.S. 294, 298 (1991); and then quoting *Rhodes v. Chapman*, 452 U.S. 337, 20 347 (1981)). “The second component is a subjective showing: that Defendant acted with 21 ‘deliberate indifference,’ which is ‘more than mere negligence,’ but ‘less than acts or omissions 22 for the very purpose of causing harm or with knowledge that harm will result.’” *McDermott v. 23 Idaho Dep’t of Corr.*, No. 1:24-CV-00140-DCN, 2024 WL 4930607, at \*4 (D. Idaho Dec. 2, 24 2024) (quoting *Farmer*, 511 U.S. at 835). 25 As the findings and recommendations correctly note, a Bivens claim is available against 26 officers only in their individual capacities. Doc. 25 at 3. To the extent plaintiff’s medical claim 27 is asserted against the entities “Region/USA,” that claim cannot proceed as a Bivens claim. 28 *Morgan v. U.S.*, 323 F.3d 776, 780 n.3 (9th Cir. 2003); *Vaccaro v. Dobre*, 81 F.3d 854, 857 (9th 1 Cir. 1996). Plaintiff’s conclusory assertions are also insufficient to demonstrate that any 2 defendant was deliberately indifferent to plaintiff’s serious medical needs. *Estelle v. Gamble*, 429 3 U.S. 97, 104–06 (1976). Plaintiff’s objections also suggest that plaintiff is refusing to receive 4 further surgery to address his condition. 5 Plaintiff’s brief reference in his objections to an equal protection violation is conclusory 6 and fails to provide the necessary factual basis to allow for “the reasonable inference that the 7 defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 663, 129 S. Ct. 8 1937, 1940, 173 L. Ed. 2d 868 (2009). Moreover, that claim arises in “a new Bivens context.” 9 *Ziglar v. Abbasi*, 582 U.S. 120, 140 (2017); cf. *Davis v. Passman*, 442 U.S. 228 (1979) 10 (recognizing Bivens remedy for Fifth Amendment Equal Protection claim based on gender 11 discrimination in federal employment). For the reasons explained in the findings and 12 recommendations, Doc. 25 at 5:25–6:6, this cause of action cannot be recognized under Bivens. 13 See also *Egbert v. Boule*, 596 U.S. 482, 493 (2022) (“a court may not fashion a Bivens remedy if 14 Congress already has provided, or has authorized the Executive to provide, an alternative 15 remedial structure.”). 16 In accordance with the provisions of 28 U.S.C. § 636(b)(1), this Court has conducted a de 17 novo review of this case. Having carefully reviewed the file, including plaintiff’s objections, the 18 Court finds the findings and recommendations to be supported by the record and by proper 19 analysis. 20 /// 21 /// 22 /// 23 /// 24 /// 25 /// 26 /// 27 /// 28 /// 1 Accordingly: 2 1. The findings and recommendations issued on January 23, 2025, Doc. 25, are 3 adopted in full; 4 2. This action is

dismissed for failure to state a cognizable claim upon which relief 5 may be granted; and 6 3. The  
Clerk of the Court is directed to close this case. 7 8

g | SO ORDERED. \_

10 Dated: \_ August 24, 2025 4h

UNITED STATES DISTRICT JUDGE

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