

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

Jeff Kile v. J. Doerer

No. 1:24-cv-01177-KES-SAB (PC) · No. No. 1:24-cv-01177-KES-SAB (PC) · Decided October 7, 2025

OPINION

Doerer

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10

11 JEFF KILE, No. 1:24-cv-01177-KES-SAB (PC)

12 Plaintiff, FINDINGS AND RECOMMENDATION

RECOMMENDING DISMISSAL OF ACTION

13 v. FOR FAILURE TO STATE A COGNIZABLE

CLAIM FOR RELIEF

14 J. DOERER,

(ECF No. 26) 15 Defendant. 16 17 Plaintiff is proceeding pro se and in forma pauperis in this civil rights action. 18 Plaintiff's complaint in this action was filed on September 18, 2024. (ECF No. 1.) 19 On July 29, 2025, the Court screened the complaint, found that Plaintiff failed to state a 20 cognizable claim for relief, and granted Plaintiff thirty days to file an amended complaint. (ECF 21 No. 25.)

22 Plaintiff failed to file an amended complaint or otherwise respond to the July 29, 2025 23 order. Therefore, on September 8, 2025, the Court issued an order for Plaintiff to show cause 24 why the action should not be dismissed. (ECF No. 26.) Plaintiff has failed to respond to the 25 order to show cause and the time to do so has now passed. Thus, the operative complaint before 26 the Court is the initial complaint, which as explained below, fails to state a cognizable claim for 27 relief and dismissal of the action is warranted. 28 1 I.

2 SCREENING REQUIREMENT

3 The Court is required to screen complaints brought by prisoners seeking relief against a 4 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The 5 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally 6 "frivolous or malicious," that "fail[] to state a claim on which relief may be granted," or that 7 "seek[] monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 8 1915(e)(2)(B); see also 28 U.S.C. § 1915A(b). 9 A complaint must contain "a short and plain

statement of the claim showing that the 10 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not 11 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere 12 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell 13 Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate 14 that each defendant personally participated in the deprivation of Plaintiff’s rights. *Jones v. 15 Williams*, 297 F.3d 930, 934 (9th Cir. 2002). 16 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings 17 liberally construed and to have any doubt resolved in their favor. *Wilhelm v. Rotman*, 680 F.3d 18 1113, 1121 (9th Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be 19 facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer 20 that each named defendant is liable for the misconduct alleged. *Iqbal*, 556 U.S. at 678-79; *Moss 21 v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant 22 has acted unlawfully” is not sufficient, and “facts that are ‘merely consistent with’ a defendant’s 23 liability” falls short of satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d 24 at 969. 25 II.

26 COMPLAINT ALLEGATIONS

27 The incidents at issue in this complaint took place at the United States Penitentiary in 28 Atwater (USP Atwater). 1 On or about August 9 to October 9, 2024, USP Atwater was placed on lockdown for 60 2 days requiring inmates to be confined to their cells for 24 hours a day. During this time, the Unit 3 Team (consisting of Plaintiff’s unit manager, case manager, and counselor) were responsible to 4 make administrative remedy forms (including Federal Tort Claims Act forms) available to 5 Plaintiff. Plaintiff had no way to approach the Unit Team members to request administrative 6 remedy forms. Plaintiff sent a copout via institutional mail to the Unit Team requesting informal 7 resolution of issues. 8 During the lockdown, Plaintiff was “cut off from the world” and denied: (1) access to 9 current events; (2) communication with anyone outside the facility; (3) access to the court; (4) 10 access to medical treatment; (5) access to his personal property; (6) access to cleaning supplies; 11 and (7) access to commissary. 12 Plaintiff attempts to bring the following claim: (1) denial of access to administrative 13 remedy forms; (2) denial of free speech and access to the courts in violation of the First 14 Amendment; (3) denial of medical care under the Eighth Amendment; (4) denial of property in 15 violation of the Fifth Amendment; (5) cruel and unusual punishment relating to the conditions of 16 confinement under the Eighth Amendment; and (6) illegal search and seizure under the Fourth 17 Amendment. 18 III.

19 DISCUSSION

20 A. *Bivens* 21 Not all constitutional cases against federal officers for damages may proceed as *Bivens* 22 claims. There is a two-part test to determine whether a *Bivens* action may proceed. *Ziglar v. 23 Abbasi*, 582 U.S. 138-139 (2017). To determine whether a *Bivens* claim is cognizable, a court 24 first “ask[s] whether the case presents ‘a new *Bivens* context’—i.e., is it ‘meaningful[ly]’ 25 different from the three cases in which the Court has implied a damages

action.” *Egbert v. Boule*, 26 596 U.S. 482, 492 (2022) (quoting *Ziglar v. Abbasi*, 582 U.S. at 139). That is, the Court must 27 determine whether the claim presents a new context from the three cases the Supreme Court has 28 allowed to proceed under *Bivens*: *Bivens v. Six Unknown Federal Narcotic Agents*, 403 U.S. 388 1 (1971); *Davis v. Passman*, 442 U.S. 228 (1979); and *Carlson v. Green*, 446 U.S. 14 (1980). If the 2 answer is no, the claim may proceed. If the answer is yes, the court must apply a “special factors” 3 analysis to determine whether “special factors counsel hesitation” in expanding *Bivens* to the 4 action. *Ziglar*, 582 U.S. at 136. 5 In *Egbert*, the Supreme Court explained that the essential determination is “whether there 6 is any reason to think that Congress might be better equipped to create a damages remedy.” 142 7 S.Ct. at 1803. If any rational reason exists to defer to Congress to establish a remedy, courts 8 “may not recognize a *Bivens* remedy.” *Id.* Further, the existence of alternative remedial 9 structures within the BOP can be a “special factor” to hesitate in finding an available *Bivens* 10 remedy. 11 Turning to Plaintiff’s claims, the Supreme Court has never recognized a *Bivens* remedy 12 under the First Amendment and the Ninth Circuit has also refused to extend a *Bivens* remedy to a 13 claim under the First Amendment. *Reichle v. Howards*, 566 U.S. 658, 663 n.4 (2012) (citing 14 *Iqbal*, 556 U.S. at 675; *Bush v. Lucas*, 462 U.S. 367, 368 (1983)); *Lee v. Matevousian*, 2018 WL 15 5603593, at *3-4 (E.D. Cal. Oct. 26, 2018) (declining to infer *Bivens* remedy for First 16 Amendment retaliation and denial of access to courts claims). Since *Ziglar v. Abbasi*, the Ninth 17 Circuit has declined to extend the *Bivens* remedy to claims brought under the First Amendment. 18 See *Schwarz v. Meinberg*, 761 F. App’x 732, 734-35 (9th Cir. 2019) (finding denial of access to 19 courts claim was a “new *Bivens* context” and declining to extend private right of action). 20 The Ninth Circuit has also declined to extend *Bivens* to claims relating to unsanitary cell 21 conditions. See *Schwarz v. Meinberg*, 761 F. App’x 732, 733–34 (9th Cir. 2019). In addition, 22 the Ninth Circuit has found a Fifth Amendment procedural due process claim presents a new 23 *Bivens* context in the prisoner context and thus is not a viable claim. See, e.g., *Vega v. United* 24 *States*, 881 F.3d 1146, 1153–54 (9th Cir. 2018). Additionally, to state a cognizable due process 25 claim, a plaintiff must first identify a protected life, liberty, or property interest of which he has 26 been deprived. *Board of Regents v. Roth*, 408 U.S. 564, 570–71 (1972). Plaintiff has not failed to 27 do so as he alleges only that his personal property was confiscated because of the prison “shake 28 down.” (ECF No. 4 at 8-9). The Ninth Circuit has previous found that the deprivation of property 1 involved a new *Bivens* context and is not an actionable claim. See *Jackson v. McNeil*, No. 20- 2 35991, 2023 WL 3092302, at *1 (9th Cir. Apr. 26, 2023). Although Plaintiff alleges the 3 unavailability of a grievance process deprived him of access to the courts, (ECF No. 4 at 5), 4 exhaustion is excused under § 1997e when a grievance process is unavailable, and Plaintiff 5 cannot show “actual injury” to demonstrate a cognizable claim. See *Sapp v. Kimbrell*, 623 F.3d 6 813, 823 (9th Cir.2010); see also *Schwarz*, 761 F. App’x at 734 (“*Schwarz’s* access to courts 7 claim under the First and Fifth Amendments . . . constitute[s] [a] new *Bivens* context[].”). 8 The Ninth Circuit has recently determined that a denial of medical treatment can proceed 9 under *Bivens*, in specific

circumstances, if the individual prison staff acted with deliberate indifference to a serious medical need. *Watanabe v. Derr*, 115 F.4th 1034, 1043 (9th Cir. 2024). 11 The test for deliberate indifference consists of two parts. *Jett v. Penner*, 439 F.3d 1091, 12 1096 (9th Cir. 2006) (internal citations omitted). First, the plaintiff must show a serious medical 13 need by demonstrating that failure to treat a prisoner's condition could result in further significant 14 injury or the unnecessary and wanton infliction of pain. *Id.* (internal citations and quotations 15 omitted.) Second, the plaintiff must show that the defendant's response to the need was 16 deliberately indifferent. *Id.* The second prong is satisfied by showing "(a) a purposeful act or 17 failure to respond to a prisoner's pain or possible medical need and (b) harm caused by the 18 indifference." *Id.* Indifference "may appear when prison officials deny, delay or intentionally 19 interfere with medical treatment, or it may be shown by the way in which prison physicians 20 provide medical care." *Id.* (internal citations omitted). However, an inadvertent or negligent 21 failure to provide adequate medical care alone does not state a claim under § 1983. *Id.* 22 "A difference of opinion between a physician and the prisoner – or between medical 23 professionals – concerning what medical care is appropriate does not amount to deliberate 24 indifference." *Snow v. McDaniel*, 681 F.3d 978, 987 (9th Cir. 2012) (citing *Sanchez v. Vild*, 891 25 F.2d 240, 242 (9th Cir. 1989), overruled in part on other grounds, *Peralta v. Dillard*, 744 F.3d 26 1076, 1082-83 (9th Cir. 2014); *Wilhelm v. Rotman*, 680 F.3d 1113, 1122-23 (9th Cir. 2012) 27 (citing *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1986). Rather, Plaintiff "must show that 28 the course of treatment the doctors chose was medically unacceptable under the circumstances 1 and that the defendants chose this course in conscious disregard of an excessive risk to [his] 2 health." *Snow*, 681 F.3d at 988 (citing *Jackson*, 90 F.3d at 332) (internal quotation marks 3 omitted).) In addition, "[m]edical malpractice does not become a constitutional violation merely 4 because the victim is a prisoner." *Estelle*, 429 U.S. at 106; *Snow*, 681 F.3d at 987-88, overruled in 5 part on other grounds, *Peralta*, 744 F.3d at 1082-83; *Wilhelm*, 680 F.3d at 1122. 6 Here, Plaintiff fails to allege an objectively serious medical need. Plaintiff alleges that 7 during the lockdown his eyeglasses were confiscated which caused headaches and blurred vision. 8 (ECF No. 4 at 7.) In addition, Plaintiff claims he went through withdrawals because he was self- 9 medicating due to an addiction to opiates and there was no doctor to treat him. (*Id.*) Plaintiff also 10 claims that he suffered anxiety and depression. (*Id.*) These allegations do not present an 11 objectively serious medical need under the Eighth Amendment. Plaintiff's allegation as to the 12 confiscation of his eyeglasses is too vague and conclusory to find a serious medical need. See, 13 e.g., *Canell v. Multnomah County*, 141 F. Supp. 2d 1046, 1057 (D. Or. 2001) ([w]hile severe eye 14 injuries or legal blindness may constitute a serious medical need," the same is not true, for 15 example, with regard to "reading glasses.") (citing *Franklin v. State of Oregon*, 662 F.2d 1337 16 (9th Cir. 1981); *McMillen v. Fairman*, 1997 WL 603853 *3 (N.D. Ill. 1997) (some discomfort 17 suffered as a result of broken eyeglasses not being replaced insufficient to demonstrate a serious 18 medical need); see also *Morales v. California Forensic Med. Grp., Inc.*, No. CIV S 09-3610 GGH 19 P, 2010 WL

1404762, at *2 (E.D. Cal. Apr. 6, 2010) (dismissing prisoner’s claims of “blurry vision and irritation of un-focused sight” due to lack of corrective eyewear for failing to state an Eighth Amendment claim under § 1915A(b)). In addition, Plaintiff’s claim that he self-medicated and suffered withdrawals from an opiate addiction, lacks sufficient factual details to find it constitutes a serious medical need. See *Jett*, 493 F.3d 1091, 1096 (9th Cir. 2006) (a serious medical need that a failure to treat “could result in further significant injury or the unnecessary and wanton infliction of pain.”). Further, Plaintiff’s allegation that he suffered anxiety and depression, without more, is not sufficient to constitute a serious medical need under the Eighth Amendment. See *Doty v. Cnty. of Lassen*, 37 F.3d 540, 546 (9th Cir. 1994) (holding prisoner’s 28 “mild stress-related ailments,” which included headache, nausea, and depressed appetite, did not 1 establish a serious medical need). 2 Second, even if Plaintiff demonstrated a serious medical need, he does not link or allege 3 who was responsible for the denial of medical care. See *Farmer v. Brennan*, 511 U.S. 832, 837 4 (1994) (prison official is deliberately indifferent only if he knows of and disregards an excessive 5 risk to inmate health or safety by failing to take reasonable steps to abate it.). Accordingly, 6 Plaintiff fails to state a cognizable claim for relief.

7 B. FTCA

8 In 1946, Congress passed the FTCA, “which waived the sovereign immunity of the United 9 States for certain torts committed by federal employees.” *Brownback v. King*, 592 U.S. 209, 212 10 (2021) (quoting *F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994)); see also 28 U.S.C. §§ 1346(b) (1), 11 2674. 12 The FTCA is a limited waiver of sovereign immunity and allows for the United States to 13 be held liable for certain specified state tort actions, including negligence resulting in personal 14 injury. 28 U.S.C. § 1346(b). The FTCA provides the exclusive remedy for torts committed by 15 federal employees acting within the scope of their employment. *Nurse v. United States*, 226 F.3d 16 996, 1000 (9th Cir. 2000). Because the remedy is against the United States and not against 17 individual employees, the United States is the only proper defendant for such a claim. 28 U.S.C. § 18 2679(b); *Kennedy v. U.S. Postal Serv.*, 145 F.3d 1077, 1078 (9th Cir. 1998) (per curiam). Under 19 the FTCA, the United States can be held liable for state torts “in the same manner and to the same 20 extent as a private individual under like circumstances,” 28 U.S.C. § 2674, but not for 21 constitutional tort claims, *FDIC v. Meyer*, 510 U.S. at 478. 22 To state a claim under the FTCA, a plaintiff must allege facts that support his tort claim 23 and satisfy the elements of a claim in accordance with the state law where the act or omission 24 occurred. 28 U.S.C. § 1346(b)(1); *United States v. Olson*, 546 U.S. 43, 45–46 (2005). Under 25 California law, to state a claim the plaintiff must show that the “defendant had a duty to use due 26 care, that he breached that duty, and that the breach was the proximate or legal cause of the 27 resulting injury.” *Brown v. USA Taekwondo*, 483 P.3d 159, 164 (Cal. 2021) (quoting *Nally v. 28 Grace Cmty. Church*, 47 Cal. 3d 278, 292 (1988)). 1 In this instance, Plaintiff fails to set forth any factual or legal circumstances giving rise to 2 | a claim under the FTCA. Indeed, Plaintiff makes only passing reference to the FTCA in his 3 | complaint. There are not sufficient allegations to

demonstrate that any Defendants' actions or 4 | inactions specifically resulted in harm under the FTCA. As such, Plaintiff has not provided each 5 | of the Defendants sufficient notice of the specific claims against them under the FTCA. See Fed. 6 | R. Civ. P. 8. Consequently, without any linkage between the actions or inactions of each 7 | individual Defendant and the harm alleged, Plaintiffs claims are nothing more than speculation, 8 | devoid of factual support. 9 IV.

10 RECOMMENDATION

11 Based on the foregoing, it is HEREBY RECOMMENDED that this action be dismissed 12 | for failure to state a cognizable claim for relief. 13 This Findings and Recommendation will be submitted to the United States District Judge 14 | assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) 15 | days after being served with this Findings and Recommendation, Plaintiff may file written 16 | objections with the Court, limited to 15 pages in length, including exhibits. The document should 17 | be captioned "Objections to Magistrate Judge's Findings and Recommendation." Plaintiff is 18 || advised that failure to file objections within the specified time may result in the waiver of rights 19 | appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v.* 20 | *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). 21

IT IS SO ORDERED. DAA Le

23 | Dated: _ October 6, 2025

STANLEY A. BOONE

24 United States Magistrate Judge 25 26 27 28