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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

SANDI NIEVES,

Plaintiff,

v.

DEBORAH PATRICK, et al.,

Defendants.

CASE NO. 1:07-cv-01813-OWW-DLB PC

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSAL OF ACTION  
FOR FAILURE TO STATE ANY CLAIMS  
UPON WHICH RELIEF MAY BE GRANTED

(Doc. 26)

OBJECTIONS DUE WITHIN THIRTY DAYS

**Recommendation of Dismissal Following Screening of Second Amended Complaint**

**I. Procedural History**

Plaintiff Sandi Nieves, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on December 13, 2007. On February 9, 2009, the Court issued an order dismissing Plaintiff’s original complaint for failure to state a claim, with leave to amend. (Doc. 23.) Plaintiff filed a First Amended Complaint on March 2, 2009. (Doc. 24.) On July 7, 2009, the Court issued an order dismissing Plaintiff’s First Amended Complaint for failure to state a claim, with leave to amend. (Doc. 25.) Plaintiff’s Second Amended Complaint, filed August 5, 2009, is now pending before the Court.

**II. Screening Requirement**

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally

1 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
2 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).  
3 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall  
4 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a  
5 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

6 A complaint must contain “a short and plain statement of the claim showing that the pleader  
7 is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
8 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
9 do not suffice.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (citing Bell Atlantic Corp. v.  
10 Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff must set forth “sufficient  
11 factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” Iqbal, 129 S.Ct. at  
12 1949 (quoting Twombly, 550 U.S. at 555). While factual allegations are accepted as true, legal  
13 conclusion are not. Id. at 1949.

### 14 **III. Plaintiff’s Claims**

15 The events at issue in this action allegedly occurred at Central California Women’s Facility  
16 (“C.C.W.F.”) in Chowchilla, California. Plaintiff names Warden Deborah Patrick, Associate  
17 Director Wendy Stills, Secretary James E. Tilton, and the California Department of Corrections and  
18 Rehabilitation (“C.D.C.R”) as defendants.

19 Plaintiff alleges that defendants knowingly and willingly caged human beings. Plaintiff  
20 alleges that defendants have caused her mental and physical anguish. Plaintiff seeks to be  
21 reintegrated into general population, or sent to another women’s prison. Plaintiff alleges that she  
22 has also been denied her right to practice her religion. Plaintiff alleges a violation of her First,  
23 Eighth and Fourteenth Amendment rights. Plaintiff seeks equitable relief.

#### 24 **1. Defendant California Department of Corrections and Rehabilitation**

25 As Plaintiff was previously informed, she may not bring suit against C.D.C.R. in federal  
26 court because it is a state agency and is entitled to Eleventh Amendment immunity. Aholelei v.  
27 Dept. of Public Safety, 488 F.3d 1144, 1147 (9th Cir. 2007). Plaintiff’s claims against C.D.C.R. fail  
28 as a matter of law.

1                   **2.       First Amendment Religion Claim**

2                   “Inmates . . . retain protections afforded by the First Amendment, including its directive that  
3 no law shall prohibit the free exercise of religion.” O’Lone v. Estate of Shabazz, 482 U.S. 342, 348  
4 (1987) (internal quotations and citations omitted). The protections of the Free Exercise Clause are  
5 triggered when prison officials substantially burden the practice of an inmate’s religion by preventing  
6 him from engaging in conduct which he sincerely believes is consistent with his faith. Shakur v.  
7 Schriro, 514 F.3d 878, 884-85 (9th Cir. 2008); Freeman v. Arpaio, 125 F.3d 732, 737 (9th Cir.  
8 1997), *overruled in part by Shakur*, 514 F.3d at 884-85.

9                   Plaintiff’s allegation that religion is not allowed into the unit is not sufficient by itself to state  
10 a cognizable First Amendment claim. First, Plaintiff has not provided any factual detail to support  
11 her allegation that religion has been barred from her unit, or how she has been prevented from  
12 engaging in conduct consistent with her faith. Second, as Plaintiff was previously informed, she  
13 must link the alleged constitutional violation to a particular defendant. Plaintiff does not indicate  
14 how any of the named defendants denied her free exercise of religion. For these reasons, Plaintiff  
15 fails to state a cognizable First Amendment claim.

16                   **3.       Eighth Amendment Conditions of Confinement Claim**

17                   Plaintiff alleges that defendants have kept her in a cage. Plaintiff requests that she be treated  
18 as a general population inmate.

19                   The Eighth Amendment protects prisoners from inhumane methods of punishment and from  
20 inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006).  
21 Extreme deprivations are required to make out a conditions of confinement claim, and only those  
22 deprivations denying the minimal civilized measure of life’s necessities are sufficiently grave to form  
23 the basis of an Eighth Amendment violation. Hudson v. McMillian, 503 U.S. 1, 9, 112 S.Ct. 995  
24 (1992) (citations and quotations omitted). In order to state a claim for violation of the Eighth  
25 Amendment, the plaintiff must allege facts sufficient to support a claim that prison officials knew  
26 of and disregarded a substantial risk of serious harm to the plaintiff. E.g., Farmer v. Brennan, 511  
27 U.S. 825, 847, 114 S.Ct. 1970 (1994); Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

1 The circumstances, nature, and duration of the deprivations are critical in determining  
2 whether the conditions complained of are grave enough to form the basis of a viable Eighth  
3 Amendment claim. Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2006).

4 Again, Plaintiff's vague allegations are insufficient to support her claim. An allegation that  
5 she has been caged is not sufficient by itself to state a cognizable claim. The Court notes that  
6 Plaintiff has twice now been provided with the legal standards for alleging a claim for relief for  
7 violation of the Eighth Amendment, but still has been unable to do so. (Docs. 23, 25.)

8 **4. Equal Protection Clause**

9 The Equal Protection Clause requires that persons who are similarly situated be treated alike.  
10 City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985). An equal protection  
11 claim may be established in two ways. First, a plaintiff establishes an equal protection claim by  
12 showing that the defendant has intentionally discriminated on the basis of the plaintiff's membership  
13 in a protected class. See e.g., Lee v. City of Los Angeles, 250 F.3d 668, 686 (9th Cir.2001). Under  
14 this theory of equal protection, the plaintiff must show that the defendants' actions were a result of  
15 the plaintiff's membership in a suspect class, such as race. Thornton v. City of St. Helens, 425 F.3d  
16 1158, 1167 (9th Cir. 2005).

17 If the action in question does not involve a suspect classification, a plaintiff may establish  
18 an equal protection claim by showing that similarly situated individuals were intentionally treated  
19 differently without a rational relationship to a legitimate state purpose. Village of Willowbrook v.  
20 Olech, 528 U.S. 562, 564 (2000); San Antonio School District v. Rodriguez, 411 U.S. 1 (1972);  
21 Squaw Valley Development Co. v. Goldberg, 375 F.3d 936, 944 (9th Cir.2004); SeaRiver Mar. Fin.  
22 Holdings, Inc. v. Mineta, 309 F.3d 662, 679 (9th Cir. 2002). To state an equal protection claim under  
23 this theory, a plaintiff must allege that: (1) the plaintiff is a member of an identifiable class; (2) the  
24 plaintiff was intentionally treated differently from others similarly situated; and (3) there is no  
25 rational basis for the difference in treatment. Village of Willowbrook, 528 U.S. at 564. If an equal  
26 protection claim is based upon the defendant's selective enforcement of a valid law or rule, a  
27 plaintiff must show that the selective enforcement is based upon an "impermissible motive." Squaw  
28 Valley, 375 F.3d at 944; Freeman v. City of Santa Ana, 68 F.3d 1180, 1187 (9th Cir.1995).

1 Plaintiff requests to be treated as a general population inmate. However, Plaintiff has not  
2 identified herself as a member of any identifiable class. Presuming that she is a condemned inmate  
3 and that she is alleging differential treatment based on being a member of this class, it is not clear  
4 how she has been treated differently, and she has not sufficiently alleged that there is no rational  
5 basis for any difference in treatment between general population inmates and condemned inmates.  
6 Plaintiff fails to state a cognizable Equal Protection claim.

#### 7 **5. Supervisory Liability**

8 Plaintiff alleges that she has suffered numerous indignities while incarcerated at C.C.W.F.,  
9 including harassment by nurses, violation of her “medical confidentiality” by doctors, denial of  
10 mental health counseling and/or inadequate medical care, and a near death experience from over-  
11 medication. Plaintiff does not allege that any of the named defendants were personally involved in  
12 these incidents but that they were on duty at the times of these abuses.

13 The Court has previously explained to Plaintiff that there is no respondeat superior liability  
14 under section 1983, and therefore, each defendant is only liable for his own misconduct. *Iqbal*, 129  
15 S.Ct. at 1948-49. (Docs. 23, 25.) The fact that Warden Patrick, Associate Director Stills and  
16 Secretary Tilton each hold a supervisory position within C.D.C.R. does not make them liable for the  
17 conduct of the correctional officers and medical staff Plaintiff complains of in her Second Amended  
18 Complaint. Plaintiff fails to state any claims against defendants under a theory of supervisory  
19 liability.

#### 20 **IV. Conclusion and Recommendation**

21 Plaintiff’s Second Amended Complaint fails to state any claims upon which relief may be  
22 granted under section 1983. Plaintiff was previously provided with two opportunities to amend her  
23 claims, but was unable to do so. *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987).  
24 Accordingly, the Court HEREBY RECOMMENDS dismissal of this action, with prejudice, for  
25 failure to state any claims upon which relief may be granted under section 1983.

26 These Findings and Recommendations will be submitted to the United States District Judge  
27 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30)**  
28 **days** after being served with these Findings and Recommendations, Plaintiff may file written

1 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s  
2 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the  
3 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d  
4 1153 (9th Cir. 1991).

5  
6 IT IS SO ORDERED.

7 **Dated: August 19, 2009**

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE