

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

COREY MITCHELL,

Plaintiff,

VS.

B. DAVIGA, et al.,

Defendants.

1:13-cv-01324-GSA-PC

ORDER FOR THIS ACTION TO
PROCEED AGAINST DEFENDANTS
SHELDON AND CHAVEZ FOR
FAILURE TO PROTECT PLAINTIFF,
AND DISMISSING ALL OTHER
CLAIMS AND DEFENDANTS FROM
THIS ACTION

ORDER FINDING SERVICE OF
SECOND AMENDED COMPLAINT
APPROPRIATE, AND FORWARDING
SERVICE DOCUMENTS TO
PLAINTIFF FOR COMPLETION AND
RETURN WITHIN THIRTY DAYS
(Doc. 11.)

Corey Mitchell (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on August 21, 2013. (Doc. 1.)

On October 28, 2013, Plaintiff consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c), and no other parties have made an appearance. (Doc. 6.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of California, the undersigned shall conduct any and all proceedings in the case until such time as reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

1 On January 9, 2014, Plaintiff filed the First Amended Complaint. (Doc. 9.) On June
2 26, 2014, the First Amended Complaint was stricken from the record by the court for lack of
3 Plaintiff's signature, with leave to amend. (Doc. 10.) On July 14, 2014, Plaintiff filed the
4 Second Amended Complaint. (Doc. 11.) The court screened the Second Amended Complaint
5 pursuant to 28 U.S.C. § 1915A and entered an order on February 11, 2015, requiring Plaintiff
6 to either file a Third Amended Complaint or notify the court that he is willing to proceed only
7 on the claims found cognizable by the court. (Doc. 14.) On March 16, 2015, Plaintiff filed a
8 notice informing the court that he is willing to proceed only on the cognizable claims. (Doc.
9 15.)

10 The court finds the Second Amended Complaint appropriate for service of process.
11 Accordingly, it is HEREBY ORDERED that:

- 12 1. This case now proceeds on the Second Amended Complaint filed on July 14,
13 2014, against defendants Sergeant Sheldon and Correctional Officer Chavez, for
14 failure to protect Plaintiff in violation of the Eighth Amendment;
- 15 2. All other claims and defendants are DISMISSED from this action;
- 16 3. Plaintiff's claims for improper appeals process are DISMISSED from this action
17 based on Plaintiff's failure to state a claim under § 1983;
- 18 4. Plaintiff's claims arising from events occurring at High Desert State Prison are
19 DISMISSED from this action for lack of venue, without prejudice to initiating
20 new actions for these claims at the Sacramento Division of the Eastern District
21 of California;
- 22 5. Defendants Chief Deputy Warden E. Blanco; Lieutenant P. Morales; Chief D.
23 Foston, and Appeals Coordinators B. Daviga, S. Tallerica, R. Davis, and D.
24 Tarnoff are DISMISSED from this action based on Plaintiff's failure to state any
25 claims against them under § 1983;
- 26 6. Correctional Counselor L. Maldonaldo and Classification Committee Chair
27 Williams are DISMISSED from this action due to the dismissal of the claims
28 against them;

7. The Clerk is directed to reflect the dismissal of all defendants, except defendants Chavez and Sheldon, from this action on the court's docket;
8. Service is appropriate for the following defendants:

SERGEANT SHELDON

CORRECTIONAL OFFICER CHAVEZ

9. The Clerk of Court shall SEND Plaintiff two (2) USM-285 forms, two (2) summonses, a Notice of Submission of Documents form, an instruction sheet and a copy of the Second Amended Complaint filed on July 14, 2014 (Doc. 11);
10. Within **thirty (30) days** from the date of this order, Plaintiff shall complete the attached Notice of Submission of Documents and submit the completed Notice to the court with the following documents:
 - a. Completed summonses;
 - b. One completed USM-285 form for each defendant listed above; and
 - c. Three (3) copies of the endorsed Second Amended Complaint filed on July 14, 2014;
11. Plaintiff need not attempt service on defendants and need not request waiver of service. Upon receipt of the above-described documents, the court will direct the United States Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4 without payment of costs; and
12. The failure to comply with this order may result in the dismissal of this action.

IT IS SO ORDERED.

Dated: March 17, 2015 /s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE