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

ROBERT P. BENYAMINI,

Plaintiff,

No. CIV S-09-2602 LKK GGH P

vs.

MENDOZA, et al.,

Defendants.

ORDER

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Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. This order concerns the magistrate judge’s findings and recommendations filed on June 2, 2010 (Dkt. No. 16). In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case.

Plaintiff’s complaint names ten defendants, all corrections officers, and alleges various theories of liability relating to a period of time from May 4, 2005 to May 14, 2005. Plaintiff alleges that he was sprayed with "o.c. spray," after which defendants denied plaintiff with access to a shower or other means to decontaminate himself for this period. Plaintiff further alleges that during this period he was deprived of time outside his cell, including time for

1 exercise, and of access to a television or radio. Although plaintiff's complaint further refers to a  
2 cell extraction, plaintiff does not appear to bring a claim based on the extraction itself.

3 In an order filed March 2, 2010, the magistrate judge granted plaintiff in forma  
4 pauperis status. In the course of so doing, the magistrate judge screened plaintiff's complaint.  
5 The magistrate judge concluded that plaintiff had stated a colorable claim regarding denial of  
6 plaintiff's requests to clean himself after being sprayed with o.c. spray. The magistrate judge  
7 concluded that plaintiff had alleged the involvement of seven defendants in this denial:  
8 defendants Mendoza, Brown, Baumberger, Paul, Leese, Formasi, and Northener. The magistrate  
9 judge concluded that plaintiff's allegations regarding denial of time outside his cell, denial of  
10 outdoor exercise, and denial of access to television and radio did not allege conduct rising to the  
11 level of an Eighth Amendment violation. Finally, the magistrate judge concluded that the  
12 complaint did not link the remaining three defendants, Hamilton, Ramirez and Hurtado, to any  
13 the surviving claim regarding access to a shower or to any other colorable claim. The magistrate  
14 judge therefore dismissed these three defendants, as well as the claims regarding denial of  
15 outdoor or physical exercise and of access to a television or radio, with leave to file an amended  
16 complaint within twenty-eight days of service of the March 2 order.

17 That time period elapsed, and plaintiff did not file an amended complaint. On  
18 June 2, 2010, the magistrate judge filed an order finding that service was appropriate on  
19 defendants Mendoza, Brown, Baumberger, Paul, Leese, Formasi, and Northener regarding  
20 plaintiff's claim about access to a shower. Also on June 2, 2010, the magistrate judge filed the  
21 findings and recommendations at issue here, recommending dismissal of Hamilton, Ramirez and  
22 Hurtado and the claims previously found to be inadequate. These recommendations were served  
23 on plaintiff and contained notice to plaintiff that any objections to the findings and  
24 recommendations were to be filed within fourteen days. Plaintiff has filed timely objections to  
25 the findings and recommendations.

26 Plaintiff objects solely to the dismissal of defendants Hamilton, Ramirez and

1 Hurtado. His objections state that these defendants also participated in the conduct underlying  
2 plaintiff's surviving claim, in that they knew about plaintiff's situation yet personally refused to  
3 allow plaintiff to shower. Plaintiff was previously instructed to file an amended complaint  
4 explaining these officers' roles in the surviving claim, yet plaintiff failed to do so. Nonetheless,  
5 in light of plaintiff's pro se status, the court will grant plaintiff another chance to file an amended  
6 complaint.

7           As previously explained by the magistrate judge, the amended complaint must be  
8 complete in itself without reference to any prior pleading. See Local Rule 220. Once plaintiff  
9 files an amended complaint, the original pleading no longer serves any function in the case.  
10 Therefore, in an amended complaint, as in an original complaint, each claim and the involvement  
11 of each defendant must be sufficiently alleged. Thus, the amended complaint must repeat the  
12 allegations underlying plaintiff's claim that defendants below violated his Eighth Amendment  
13 rights by refusing his requests to be allowed to clean himself and finish decontaminating himself  
14 after having been sprayed with o.c. spray by denying him access to a shower for eight or more  
15 days, during the period of time from May 4, 2005, until May 14, 2005, and the amended  
16 complaint must allege in specific terms how each named defendant is involved.

17           Accordingly, IT IS HEREBY ORDERED that:


18           1. Plaintiff's claims regarding denial of outdoor or physical exercise and of access  
19 to a television or radio for the period of May 4, 2005, until May 14, 2005 are dismissed.

20           2. Plaintiff's claims against defendants Hamilton, Ramirez and Hurtado, are  
21 dismissed, because the current complaint (as opposed to plaintiff's opposition to the findings and  
22 recommendations) does not allege how these defendants were involved in the acts underlying  
23 plaintiff's surviving claim. Plaintiff is again granted leave to file an amended complaint, as  
24 explained above. Such a complaint must be filed within twenty-eight days of the date of this  
25 order.

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1                   3. Thus, the court adopts the findings and recommendations filed on June 2, 2010  
2 (Dkt. No. 16), except that the court further grants leave to file an amended complaint.

3 DATED: July 1, 2010.

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6 LAWRENCE K. KARLTON  
7 SENIOR JUDGE  
8 UNITED STATES DISTRICT COURT  
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