

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

KENNETH KNANISHU,

Plaintiff,

No. 2:10-cv-0005 JFM (PC)

vs.

SACRAMENTO SHERIFF’S DEPT.,
et al.,

Defendants.

ORDER AND

FINDINGS & RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff is presently housed at Salinas Valley State Prison in Soledad, California. This matter is before the court on defendants’ motion to dismiss. Defendants contend that this action is barred by the applicable statute of limitations and that plaintiff has failed to state a claim upon which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiff opposes the motion.

FACTUAL ALLEGATIONS

Plaintiff, a protective custody inmate, alleges that on “Tuesday 2, 2007,” while he was housed at Sacramento County Jail, defendant Deputy Jacoby, the control booth officer, opened plaintiff’s cell door and allowed an inmate named Caudle into the cell. Plaintiff claims Caudle beat him with a broken toilet plunger handle, causing numerous injuries. Plaintiff alleges that other inmates heard his cries for help and pressed emergency buttons. Approximately ten to

1 fifteen minutes later, Deputy Jacoby arrived at the cell. Fifteen to twenty minutes after Deputy
2 Jacoby's arrival, medical aid arrived. Plaintiff was transported to a hospital in Stockton, CA
3 where he received multiple stitches. Plaintiff makes no charging allegations against any of the
4 other named defendants.

5 PROCEDURAL HISTORY

6 On December 31, 2009, plaintiff filed a complaint against defendants Sheriff John
7 McGinness, Lt. Brelji, Deputy Jacoby and Sacramento County Sheriff's Department. On July 2,
8 2010, defendants filed a motion to dismiss. On August 5, 2010, plaintiff filed an opposition.

9 STANDARDS FOR A MOTION TO DISMISS

10 Rule 12(b)(6) of the Federal Rules of Civil Procedures provides for motions to
11 dismiss for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).
12 In considering a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the court must accept as
13 true the allegations of the complaint in question, Erickson v. Pardus, 551 U.S. 89, 127 S.Ct. 2197
14 (2007), and construe the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes,
15 416 U.S. 232, 236 (1974). In order to survive dismissal for failure to state a claim a complaint
16 must contain more than "a formulaic recitation of the elements of a cause of action;" it must
17 contain factual allegations sufficient "to raise a right to relief above the speculative level." Bell
18 Atlantic Corp. v. Twombly, 550 U.S. 544, 554 (2007). However, "[s]pecific facts are not
19 necessary; the statement [of facts] need only 'give the defendant fair notice of what the . . . claim
20 is and the grounds upon which it rests.'" Erickson, 551 U.S. 89, 127 S.Ct. at 2200 (quoting Bell
21 Atlantic at 554, in turn quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).

22 Although the court previously issued a screening order that expressly stated that
23 plaintiff stated a cognizable claim against defendants, the court finds that this finding does not
24 foreclose defendants' right to bring a motion to dismiss on the same grounds. See Teahan v.
25 Wilhelm, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007) (finding that the screening and dismissal
26 procedure under the Prison Litigation Reform Act "is cumulative of, not a substitute for, any

1 subsequent Rule 12(b)(6) motion that the defendant may choose to bring”). The court will
2 consider the merits of defendants’ motion to dismiss.

3 On March 30, 2010, plaintiff received the notice required by Wyatt v. Terhune,
4 305 F.3d 1033 (9th Cir. 2002), for opposing a motion to dismiss for failure to exhaust
5 administrative remedies pursuant to Rule 12(b) of the Federal Rules of Civil Procedure.

6 DEFENDANTS’ MOTION

7 A. Failure to State a Claim

8 Defendants first seek dismissal of plaintiff’s complaint for plaintiff’s failure to
9 allege sufficient facts against any of the defendants. In his opposition, plaintiff attaches his
10 grievances filed with the Sacramento County Sheriff’s Department and all responses thereto.¹
11 Plaintiff claims that Sheriff McGinness and Lt. Brelji are Deputy Jacoby’s supervisors, and that
12 the Sacramento County Sheriff’s Department is “the governing body of all of the listed
13 defendants.”

14 A complaint, or portion thereof, should only be dismissed for failure to state a
15 claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set
16 of facts in support of the claim or claims that would entitle him to relief. Hishon v. King &
17 Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer
18 v. Roosevelt Lake Log Owners Ass’n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a
19 complaint under this standard, the court must accept as true the allegations of the complaint in
20 question, Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the
21 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor,
22 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

23 The court has determined that the complaint does not contain a short and plain
24 statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible

25 ¹ The court cannot consider materials outside of the complaint on a Rule 12(b)(6) motion
26 to dismiss. Anderson v. Angelone, 86 F.3d 932, 934 (9th Cir. 1996).

1 pleading policy, a complaint must give fair notice and state the elements of the claim plainly and
2 succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff
3 must allege with at least some degree of particularity overt acts which defendants engaged in that
4 support plaintiff’s claim. Id. Because plaintiff has failed to allege any facts as to defendants
5 McGinness, Brelji and the Sacramento County Sheriff’s Department in his complaint, this claim
6 should be dismissed as to these defendants.

7 Plaintiff’s current complaint also fails as to defendant Jacoby. To state a claim
8 that his conditions of confinement violate the Eighth Amendment prohibition against cruel and
9 unusual punishment, plaintiff must allege: (1) “a substantial risk of serious harm”; and (2) that
10 prison officials acted with “deliberate indifference” to that risk. Farmer v. Brennan, 511 U.S.
11 825, 834, (1994). Deliberate indifference requires that a prison official “know[] of and
12 disregard[] an excessive risk to inmate health or safety; the official must both be aware of facts
13 from which the inference could be drawn that a substantial risk of serious harm exists, and he
14 must also draw the inference.” Id. at 837. Under the Eighth Amendment, “prison officials have
15 a duty ... to protect prisoners from violence at the hands of other prisoners.” Id. at 833. Plaintiff
16 has failed to allege any facts that establish that defendant Jacoby was aware of a substantial risk
17 of harm to plaintiff’s safety, and that the risk was consciously disregarded. This claim should
18 also be dismissed without prejudice as to defendant Jacoby.

19 B. Statute of Limitations

20 Defendants also seek dismissal on the ground that plaintiff’s complaint is barred
21 by the statute of limitations. Plaintiff does not address this argument.

22 California law determines the applicable statute of limitations in this § 1983
23 action. See Wilson v. Garcia, 471 U.S. 261 (1985). The applicable state limitations period is
24 two years. See Cal. Code Civ. P. § 335.1; see also Jones v. Blanas, 393 F.3d 918, 927 (9th Cir.
25 2004). Federal law governs when plaintiff’s § 1983 claims accrued and when the limitations
26 period begins to run. Cabrera v. City of Huntington Park, 159 F.3d 374, 379 (9th Cir. 1998).

1 Under federal law, “the claim generally accrues when the plaintiff ‘knows or has reason to know
2 of the injury which is the basis of the action.’” Id. (citations omitted).

3 Plaintiff alleges that the incident at issue took place on “Tuesday 2, 2007.”
4 Defendants request that the court take judicial notice that in 2007, the second day of the month
5 fell on a Tuesday in two months: January and October. Relying on the latter date of October 2,
6 2007, defendants argue that because plaintiff’s complaint was not filed until December 31, 2009,
7 the action was filed beyond the statutory time period.

8 Defendants, however, fail to address the fact that, in California, the applicable
9 statute of limitations period is tolled for up to two years if the cause of action accrued while the
10 plaintiff was in prison for a term that is less than life.² Cal. Civil P. Code § 352.1; Jones v.
11 Blanas, 393 F.3d 918, 927 (9th Cir. 2004). Thus, even assuming the alleged attack on plaintiff
12 occurred on January 2, 2007, plaintiff’s December 31, 2009 complaint is timely filed.

13 Based thereon, defendants’ motion to dismiss should be denied as to this ground.

14 For all of the foregoing reasons, IT IS HEREBY ORDERED that a district judge
15 be assigned to this case, and

16 IT IS HEREBY RECOMMENDED that:

17 1. Defendants’ July 2, 2010 motion to dismiss be granted in part and denied in
18 part;

19 2. Plaintiff’s complaint against all defendants except defendant Jacoby be
20 dismissed; and

21 3. Plaintiff’s complaint against defendant Jacoby be dismissed without prejudice
22 and that plaintiff be granted thirty days to file an amended complaint against defendant Jacoby

23 _____
24 ² It does not appear that plaintiff is serving a life sentence. Review of relevant
25 documents indicates that plaintiff was initially sentenced in the Eastern District of California in
26 2007 for a prison term of 60 months based on a conviction for transportation of visual depictions
of minors engaged in sexually explicit conduct. See Case No. 2:05cr0105-WBS (E.D. Cal.
2005).

1 that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
2 Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number
3 assigned this case and must be labeled "Amended Complaint". Plaintiff must file an original and
4 two copies of the amended complaint. Failure to file an amended complaint in accordance with
5 this order will result in a recommendation that this action against defendant Jacoby be dismissed.

6 These findings and recommendations are submitted to the United States District
7 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
8 days after being served with these findings and recommendations, any party may file written
9 objections with the court and serve a copy on all parties. Such a document should be captioned
10 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
11 objections shall be filed and served within fourteen days after service of the objections. The
12 parties are advised that failure to file objections within the specified time may waive the right to
13 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14 DATED: August 24, 2010.

15
16 
17 UNITED STATES MAGISTRATE JUDGE

18 /014;knan0005.mtd
19
20
21
22
23
24
25
26