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

LUTHER JONES, JR.,

Plaintiff,

No. 2:12-cv-02381 KJN¹ P

vs.

CALIFORNIA MEDICAL FACILITY
CUSTODY STAFF,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner, currently incarcerated at the California Substance Abuse Treatment Facility (“CSATF”), in Corcoran. On November 19, 2012, this court granted plaintiff’s application to proceed in forma pauperis and granted plaintiff leave to file a First Amended Complaint demonstrating, inter alia, that plaintiff had exhausted his administrative remedies before commencing this action. Plaintiff thereafter filed a proposed First Amended Complaint (“FAC”), and a motion for injunctive relief, as well as numerous other documents. For the reasons that follow, plaintiff’s motion for injunctive relief is denied, and this action is

¹ Plaintiff consented to proceed before the undersigned magistrate judge for all purposes. 28 U.S.C. § 636(c); Local Rule 305(a). (See Dkt. No. 30.) The Clerk of Court is directed to make the appropriate docket change.

1 dismissed without prejudice.

2 Plaintiff commenced this action while incarcerated at the California Medical
3 Facility (“CMF”). The court initially recommended dismissal of this action based on plaintiff’s
4 express concession that he had failed to exhaust his administrative remedies. (See Dkt. No. 13.)
5 Due to this clear inadequacy, the court declined to impose the filing fee pursuant to plaintiff’s
6 application to proceed in forma pauperis, and identified substantive deficiencies in plaintiff’s
7 complaint to guide him in the future.

8 On November 5, 2012, plaintiff filed a Notice of Change of Address, noting his
9 transfer to CSATF, and a motion for appointment of counsel, which included plaintiff’s
10 objections to the undersigned’s dismissal recommendation. Plaintiff asserted that he had
11 exhausted his administrative remedies, but was unable to so demonstrate because he had been
12 placed in administrative segregation, without access to his legal materials.

13 In an abundance of caution, this court, on November 19, 2012, vacated its
14 dismissal recommendation, granted plaintiff’s application to proceed in forma pauperis, and
15 granted plaintiff leave to file a First Amended Complaint subject to the exhaustion and
16 substantive considerations previously emphasized by the court. The court denied plaintiff’s
17 request for appointment of counsel without prejudice. (Dkt. No. 21.) The court also ordered as
18 follows (id. at 4):

19 Plaintiff may send or forward a copy of this order to the litigation
20 coordinators at CSP-COR, San Quentin State Prison, and the
21 California Medical Facility, in support of any request to obtain
22 copies of his pertinent legal documents. In addition, the court will
23 send plaintiff, together with a copy of this order, copies of all
24 documents plaintiff has filed to date in this action, together with
25 the court’s prior order. Staff at CSP-COR are directed to provide
26 plaintiff with an adequate opportunity to review all of these
documents, and to prepare an amended complaint (or a request that
this action be dismissed without prejudice).

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1 Plaintiff responded by filing numerous documents,² a proposed FAC, and a
2 motion for injunctive relief. The FAC challenges plaintiff's conditions of confinement at CMF,
3 as well as plaintiff's alleged adverse transfer to CSP-SOL (leading to plaintiff's transfer to
4 CSATF). Similar to his previous complaint, the FAC, even when read in conjunction with
5 plaintiff's additional filings, fails to demonstrate that plaintiff exhausted his administrative
6 remedies before bringing this action. While it is clear that plaintiff made several attempts to
7 administratively challenge various conditions of his confinement, these disparate challenges (e.g.,
8 inadequate diet and medical care, denial of access to legal material and law library, confiscation
9 of property) were submitted to various institutions over a period of time, and returned to plaintiff
10 for a variety of reasons (e.g., in excess of authorized number of appeals in 14-day period, failure
11 to attach pertinent documents, etc.), without any demonstration of a Third or Director's Level
12 Review. Moreover, the FAC broadly names institutional or categorical defendants ("California
13 Medical Facility Third Floor Custody Staff, Psych Department, Medical Department, R&R
14 Custody Staff"), with limited allegations of specific claims against specific individuals (e.g.,
15

16 ² In addition to his FAC and motion for injunctive relief, plaintiff has filed the following
17 documents: (1) copy of November 20, 2012 letter plaintiff wrote to C. Nules, Staff Services
18 Manager, California Correctional Health Care Services ("CCHCS"), in response to Mr. Nules'
19 November 7, 2012 letter to plaintiff, concerning plaintiff's medical care at CSATF (Dkt. No. 22);
20 (2) November 19, 2012 letter addressed to the Clerk of Court wherein plaintiff states that he is
21 having problems obtaining his legal paperwork (Dkt. No. 23); (3) November 25, 2012 letter
22 addressed to the Clerk of Court wherein plaintiff challenges a disciplinary finding, stating that he
23 sought out custodial protection when faced by a threat from other inmates; the letter also alleges
24 difficulties obtaining his legal paperwork, obtaining copies of his legal work, and obtaining
25 access to the law library (Dkt. No. 24); (4) more complete documentation of the challenged
26 disciplinary finding of November 15, 2012, pursuant to which plaintiff was found guilty of
refusal to accept assigned housing (Dkt. No. 25); (5) December 2, 2012 letter to the Clerk of
Court wherein plaintiff again alleges difficulties obtaining his legal paperwork, obtaining copies
of his legal work, and obtaining access to the law library, and further informs the court that his
medical conditions are being inadequately treated; attachments include November 15, 2012
inmate appeal challenging withholding of property; November 14, 2012 health services request
form requesting appropriate snack food to treat his diabetes (Dkt. No. 26); (6) administrative
appeals challenging November 15, 2012 disciplinary finding, submitted by plaintiff on
November 18, 2012, but returned because plaintiff had "exceeded the allowable number of
appeals filed in a 14 calendar day period pursuant to CCR 3084.1(f)" (Dkt. No. 25 at 2; see also
Dkt. No. 24 at 2-3).

1 allegedly improper confiscation of property by correctional officers Whitten and Marin “plus the
2 Sgt. I can’t pronounce his name but know by sight;” “I wrote a 602 appeal about a custody sgt.
3 named Beltram [but] [t]he 602 was never answered”). Despite repeated examination of the FAC
4 and plaintiff’s additional filings, this court is unable to identify a single cognizable claim against
5 a specific individual defendant that was administratively exhausted.

6 Similarly, plaintiff’s request for injunctive relief is so wide ranging (plaintiff
7 seeks appointment of counsel, continued protective custody separate from the CSATF general
8 population, transfer back to CMF, adequate diet and medical care) as to be superfluous.
9 Moreover, because premised on plaintiff’s current conditions of confinement at CSATF,
10 plaintiff’s motion for injunctive relief addresses matters entirely distinct from those presented in
11 the FAC, which challenge plaintiff’s conditions of confinement at CMF. The purpose of
12 preliminary injunctive relief is to preserve the status quo pending a fuller hearing on the merits of
13 the underlying claims. See Fed. R. Civ. P. 65; Local Rule 231(a). Thus, a court may not issue an
14 order against individuals or entities who are not parties to the underlying suit. Zenith Radio
15 Corp. v. Hazeltine Research, Inc., 395 U.S. 100 (1969). These rules preclude plaintiff’s motion
16 for injunctive relief on matters entirely distinct from the underlying action.

17 In addressing the obvious inadequacies of the FAC and pending motion, the
18 following factors gave the undersigned pause in deciding to dismiss this action without leave to
19 amend:

- 20 1. Plaintiff is 67 years of age.
- 21 2. Plaintiff is enrolled in the Chronic Care Program, as well as the
Mental Health Services Delivery System (“MHSDS”).
- 22 3. Plaintiff has been diagnosed with diabetes, hypertension,
hyperlipidemia, hepatitis C, benign prostate hypertrophy (BPH),
23 and chronic kidney disease due to diabetes; plaintiff also suffers
from peripheral artery disease and restless leg syndrome. Plaintiff
24 has bladder control problems, is mobility impaired and uses a
walker.
- 25 4. Plaintiff has been prescribed diabetic and “pre-dialysis” or “pre-
renal” diets, and is allergic to peanut, sesame and soy products.
- 26 5. Plaintiff believes that his commitment offense places him at
higher risk of injury by other inmates.

1 6. Plaintiff believes that placement at CMF would meet both his
2 medical and security needs.

3 Nevertheless, it appears that these matters have been squarely addressed by
4 CSATF, pursuant to communications from the Prison Law Office. The attachments to plaintiff's
5 FAC include a March 12, 2012 letter from the Prison Law Office, addressed to the Receiver's
6 Office of Legal Affairs. (Dkt. No. 27 at 30-1.) The letter inquired about plaintiff's failure to
7 receive cervical and wedge pillows, and the apparent inability of CSP-SOL to meet plaintiff's
8 several medical and housing needs. This letter apparently triggered plaintiff's transfer to
9 CSATF, although a transfer to CMF was also considered. (See id. at 27-8.)

10 On June 18, 2012, the Prison Law Office again wrote to the Receiver's Office of
11 Legal Affairs, this time inquiring about plaintiff's care at CSAFT, specifically, requesting an
12 explanation as to plaintiff's diagnoses and treatment plans for his medical problems related to his
13 liver, kidneys and prostate; special diet needs; current chrono for wedge and cervical pillows; and
14 whether plaintiff should be placed in a higher level of care due to his mobility problems and
15 difficulty walking to food and medication lines. (Dkt. No. 27 at 32-3.) By letters dated July 31,
16 2012, and August 1, 2012, a California Correctional Health Care Services ("CCHCS")
17 representative responded to the Prison Law Office, with copies sent to numerous other CDCR
18 personnel, addressing plaintiff's care with respect to each of the identified matters. (See Dkt. No.
19 27 at 40-2.)

20 These official responses appear to reflect that plaintiff is receiving adequate
21 medical care, and that dismissal of this action will not adversely impact that care. For this
22 reason, and the reasons previously stated, the court is persuaded that the instant action must be
23 dismissed, and leave to amend at this time would be futile.

24 Plaintiff may file a new action. However, plaintiff must clearly identify each
25 defendant and the action that each defendant took that resulted in a violation of plaintiff's

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1 constitutional rights.³ The court is not required to review exhibits to determine what plaintiff's
2 charging allegations are as to each named defendant. The charging allegations must be set forth
3 in the complaint so defendants have fair notice of the claims plaintiff is presenting. Moreover,
4 plaintiff should demonstrate that he has exhausted his administrative remedies as to each claim,
5 or explain, with supporting exhibits, how his administrative remedies were rendered
6 unavailable.⁴ The court should not be required to examine extraneous documents to make this
7 assessment on its own.

8 Accordingly, for the foregoing reasons, IT IS HEREBY ORDERED that:

9 1. The Clerk of Court shall note plaintiff's consent to proceed before the
10 undersigned magistrate judge for all purposes.

11 2. Plaintiff's motion for preliminary injunctive relief (Dkt. No. 29), is denied.

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15 ³ Plaintiff is also again informed that he must "link" each claim with a specific individual
16 defendant. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link
17 or connection between a specific defendant's actions and the claimed deprivation. Rizzo v.
18 Goode, 423 U.S. 362, 371 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson
19 v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). "A person 'subjects' another to the deprivation of a
20 constitutional right, within the meaning of § 1983, if he does an affirmative act, participates in
another's affirmative acts or omits to perform an act which he is legally required to do that
causes the deprivation of which complaint is made." Johnson, 588 F.2d at 743; see also Leer v.
Murphy, 844 F.2d 628, 633 (9th Cir. 1988) ("The inquiry into causation must be individualized
and focus on the duties and responsibilities of each individual defendant whose acts or omissions
are alleged to have caused a constitutional deprivation.").

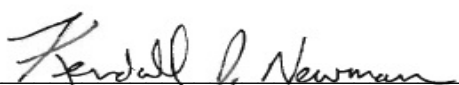
21 ⁴ Plaintiff is again informed that an inmate must only exhaust such administrative
22 remedies "as are available," 42 U.S.C. § 1997e(a); that is, exhaustion is not required when
23 circumstances render administrative remedies "effectively unavailable." Sapp v. Kimbrell, 623
24 F.3d 813 (9th Cir. 2010). If a correctional officer prevents, or interferes with, the filing of an
25 administrative appeal or the inmate's ability to exhaust his administrative remedies, the
26 exhaustion requirement may be "unavailable." An administrative remedy is "unavailable" for
purposes of exhaustion if a prison official failed to respond to a properly filed grievance or
otherwise engaged in misconduct thwarting the plaintiff's attempts to exhaust. Brown v. Valoff,
422 F.3d 926 n. 18 (9th Cir. 2005); Nunez v. Duncan, 591 F.3d 1217, 1226 (9th Cir. 2010); see
also Lewis v. Washington, 300 F.3d 829, 833 (7th Cir. 2002) ("we refuse to interpret the PLRA
'so narrowly as to permit prison officials to exploit the exhaustion requirement through indefinite
delay in responding to grievances.'")

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3. This action is dismissed without prejudice.

SO ORDERED.

DATED: April 12, 2013


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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