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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GLENN DAVID O’NEAL,
Plaintiff,
v.
J. PETERSON, et al.,
Defendants.

No. 2: 13-cv-1054 KJN P

ORDER

Introduction

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is defendants’ motion to dismiss on the following grounds: 1) pursuant to Federal Rules of Civil Procedure 18(a) and 20 for asserting unrelated claims; 2) pursuant to Federal Rule of Civil Procedure 12(b) for failing to exhaust administrative remedies; and 3) pursuant to Federal Rule of Civil Procedure 12(b)(6) for failing to state a claim upon which relief may be granted.

After carefully reviewing the record, the undersigned grants defendants’ motion, in part, with leave to amend.

Plaintiff’s Claims

This action is proceeding on the first amended complaint as to defendants Lee, Williams, Peddicord, Chaplain Howard, Chaplain Peaman and Gamberg. (ECF No. 10.) The amended

1 complaint contains three claims for relief.

2 In claim one, plaintiff alleges that on August 15, 2012, he arrived at High Desert State
3 Prison (“HDSP”) from the California Correctional Institution (“CCI”) with his religious diet card.
4 Plaintiff alleges that the card allows plaintiff to receive a vegetarian/vegan religious diet
5 throughout the California Department of Corrections (“CDCR”). Plaintiff alleges that after he
6 arrived at HDSP, officials would not honor his religious diet card. HDSP prison officials told
7 plaintiff that he would have to get a religious diet card from the HDSP chaplain. Plaintiff alleges
8 that he made numerous requests to see the chaplains, i.e., defendants Howard and Peaman, but
9 was not seen by a chaplain until October 23, 2012, i.e., two months after he arrived at HDSP.
10 Plaintiff alleges that during that month, he was served food with meat, which he could not eat.
11 Plaintiff alleges that he lost 50 pounds during this time.

12 In claim two, plaintiff alleges that after he broke his ankle in June 2011, he was seen by
13 orthopedist specialist Dr. Mehul on February 29, 2012. Dr. Mehul recommended that plaintiff
14 receive bone stimulation treatment and tibiotalar effuction. When plaintiff arrived at HDSP on
15 August 15, 2012, Dr. Pomazal recommended that plaintiff receive physical therapy. Plaintiff
16 alleges that defendant Lee denied him physical therapy, crutches, a cane, follow-up treatment and
17 x-rays by an orthopedic specialist despite plaintiff’s pain and difficulty walking.

18 In claim three, plaintiff alleges that on March 20, 2012, he was attacked by his cellmate,
19 inmate Finister, while housed at CCI. Plaintiff alleges that after he was transferred to HDSP, on
20 October 24, 2012 he told defendants Williams, Peddicord and Gamberg about the attack by
21 inmate Finister and expressed his safety concerns. Plaintiff alleges that defendants Williams,
22 Peddicord and Gamberg disregarded plaintiff’s safety needs when they housed plaintiff and
23 Finister on the same yard. Plaintiff alleges that on February 21, 2013, inmate Finister attacked
24 him a second time.

25 Discussion

26 The undersigned first considers defendants’ argument that plaintiff’s claims are not
27 properly joined.

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1 Unrelated claims against different defendants must be pursued in multiple lawsuits:

2 The controlling principle appears in Fed.R.Civ.P. 18(a): ‘A party
3 asserting a claim ... may join, [] as independent or as alternate
4 claims, as many claims ... as the party has against an opposing
5 party.’ Thus multiple claims against a single party are fine, but
6 Claim A against Defendant 1 should not be joined with unrelated
7 Claim B against Defendant 2. Unrelated claims against different
8 defendants belong in different suits, not only to prevent the sort of
morass [a multiple claim, multiple defendant] suit produce[s], but
also to ensure that prisoners pay the required filing fees for the
Prison Litigation Reform Act limits to 3 the number of frivolous
suits or appeals that any prisoner may file without prepayment of
the required fees. 28 U.S.C. § 1915(g).

9 George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007); see also Fed.R.Civ.P. 20(a)(2) (joinder of
10 defendants not permitted unless both commonality and same transaction requirements are
11 satisfied).

12 Defendants argue that the claims raised in plaintiff’s third amended complaint are not
13 properly joined because they involve three separate and distinct events against different
14 defendants. Defendants argue that there are no common questions of fact among plaintiff’s three
15 claims.

16 The undersigned agrees that plaintiff’s unrelated claims against different defendants are
17 improperly joined. While plaintiff’s claims all arose at HDSP, they involve different incidents
18 and different defendants. Accordingly, defendants’ motion to dismiss on this ground is granted
19 with leave to amend. Plaintiff is directed to choose one of the claims raised in his amended
20 complaint on which to proceed. Plaintiff is granted thirty days to file a second amended
21 complaint raising only the one claim on which he chooses to proceed. Any amended complaint
22 may not change the nature of this suit by alleging new, unrelated claims. George, 507 F.3d at 607
23 (no “buckshot” complaints).

24 Because the undersigned finds that plaintiff’s claims are not properly joined, there is no
25 need to address the remaining arguments raised in defendants’ motion to dismiss at this time.

26 Accordingly, IT IS HEREBY ORDERED that defendants’ motion to dismiss (ECF No.
27 16) is granted; plaintiff is granted thirty days to file a second amended complaint; defendants’

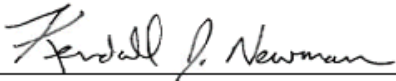
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1 response to the second amended complaint is due twenty-one days thereafter.

2 Dated: April 3, 2014

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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