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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIAN SPEARS,

Plaintiff,

v.

EL DORADO COUNTY SHERIFF’S
DEPARTMENT, et al.,

Defendants.

No. 2:15-cv-0165 MCE AC P

ORDER and

FINDINGS AND RECOMMENDATIONS

I. Introduction

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with this civil rights action filed pursuant to 28 U.S.C. § 1983, which challenges conditions of plaintiff’s confinement at the El Dorado County Jail (EDCJ) while a pretrial detainee. Plaintiff, who is African American, is currently incarcerated at Mule Creek State Prison. Pending before the court is plaintiff’s proposed Second Amended Complaint, ECF No. 33, which the court now screens pursuant to 28 U.S.C. § 1915A. This action is referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302(c). For the reasons set forth below, the court directs plaintiff to submit the information necessary for the United States Marshal to serve process on defendants El Dorado County, EDCJ Sergeant Armstrong, EDCJ Officers Handy and Garcia, and the EDCJ dentist (currently identified as Jane Doe). In addition, the court recommends the dismissal of plaintiff’s Claims Three, Eight and Ten without leave to amend.

1 II. Background

2 Plaintiff initially sought to pursue his claims jointly with three other jail inmates. The
3 actions were severed but related and each inmate was directed to pursue his own claims. Of the
4 four related cases, only the instant case proceeds.¹

5 By order filed March 5, 2019, this court screened plaintiff's First Amended Complaint
6 (FAC) and found that three of his claims were cognizable as framed: Claim Seven (cell
7 searches), Claim Nine (dental care) and Claim Eleven (legal mail). See ECF No. 28. The court
8 provided plaintiff the option of proceeding on those claims with this FAC or submitting a
9 proposed Second Amended Complaint (SAC) that included his cognizable claims and adequately
10 amended his deficient claims, specifically Claim Three (food), Claim Four (sleep), Claim Six
11 (grooming), Claim Eight (medical care/back injury), and Claim Ten (medical care/prescribed
12 treatments). At the same time, the undersigned recommended the dismissal of plaintiff's Claim
13 One (putative class action failure to protect claim alleging EDCJ failed to protect protective
14 custody (PC) inmates from general population (GP) inmates); Claim Two (putative class action
15 claim challenging the quality of inmate medical care); Claim Five (putative class action claim
16 alleging discrimination against PC inmates); and plaintiff's claims for injunctive relief against El
17 Dorado County because plaintiff is no longer incarcerated there. Id. These recommendations
18 were adopted by the district judge on June 14, 2019, dismissing Claims One, Two and Five, and
19 plaintiff's claims for injunctive relief. ECF No. 34.

20 Plaintiff opted to proceed with a proposed SAC. ECF No. 33. The SAC retains the same
21 identification of claims as set forth in the FAC, expressly "removing" Claims One, Two and Five
22 while retaining them as placeholders. Id. at 12, 17. Plaintiff explains that he has done so to
23 "make navigating this complaint more efficient." ECF No. 33 at 12.² In support of the remaining
24 claims plaintiff has refined his allegations.

25
26 _____
27 ¹ The other three related cases were closed without reaching the merits of the claims. See Case
28 Nos. 2:15-cv-00772, 2:15-cv-00773 and 2:15-cv-00774.

² Cited page numbers reflect the court's electronic pagination of the SAC, not the internal
pagination of the complaint.

1 III. Screening of Plaintiff's Second Amended Complaint

2 A. Legal Standards

3 As the undersigned previously informed plaintiff, this court is required to screen
4 complaints brought by prisoners seeking relief against a governmental entity or officer or
5 employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a
6 complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or
7 malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary
8 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). A claim is
9 legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490
10 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984).

11 In addition, a pretrial detainee’s challenges to the conditions of his or her confinement is
12 evaluated under the Fourteenth Amendment’s Due Process Clause and assessed under an
13 objective reasonability standard. Gordon v. County of Orange, 888 F.3d 1118, 1124-25 (9th Cir.
14 2018) (en banc) (citing Castro v. County of Los Angeles, 833 F.3d 1060, 1070-71 (9th Cir. 2016)
15 (en banc)), cert. denied sub nom. County of Orange v. Gordon, 2019 WL 113108 (U.S. Jan. 7,
16 2019).

17 The undersigned previously informed plaintiff of the pertinent legal standards governing
18 each of his claims and, where appropriate, the deficiencies in his prior allegations. See generally
19 ECF No. 28. The court does not repeat those standards here unless necessary to explain a ruling.

20 B. Claims for Which a Response Will Be Required

21 The allegations of the SAC are sufficient for plaintiff to proceed on the following claims
22 against the following defendants:

23 Claim Four: Plaintiff’s allegations describing the many routine jail practices that deny
24 inmates continuous sleep at night, coupled with the headaches, memory loss, memory lapses and
25 possible exacerbation of his heart condition and sleep apnea that plaintiff alleges he suffered as a
26 result, see ECF No. 33 at 14-7 (see also id. at 26-31) are sufficient to state a Fourteenth
27 Amendment conditions of confinement claim. “The mere lack of due care by a state official does
28 not deprive an individual of life, liberty, or property under the Fourteenth Amendment. Thus, the

1 plaintiff must prove more than negligence but less than subjective intent – something akin to
2 reckless disregard.” Gordon, 888 F.3d at 1125 (citations, internal quotation marks and fn.
3 omitted). Under “Monell,”³ this claim is properly brought against El Dorado County based on
4 their pertinent policies and practices concerning routine nighttime disturbances, as previously
5 recounted by the court. See ECF No. 28 at 10-1.

6 Claim Six: For the reasons previously stated by this court, ECF No. 28 at 13-4, and based
7 on plaintiff’s refined allegations, ECF No. 33 at 17-9, plaintiff may proceed on his equal
8 protection claim against EDCJ Sergeant Armstrong on the ground she intentionally deprived
9 plaintiff of regular grooming appointments and personal access to clippers at least in part because
10 plaintiff is African American.

11 Claim Seven: For the reasons previously stated by this court, plaintiff may proceed on his
12 equal protection claims against EDCJ Officers Handy and Garcia based their alleged racial
13 discrimination against plaintiff in conducting cell searches. See ECF No. 28 at 14-5.

14 Claim Nine: For the reasons previously stated by this court, plaintiff may proceed on his
15 denial of dental care and racial discrimination claims against the EDCJ Dentist at the relevant
16 time (hereafter “Jane Doe”).⁴ See ECF No. 28 at 17-8.

17 Claim Eleven: For the reasons previously stated by this court, plaintiff may proceed on
18 his First and Sixth Amendment “Monell claims” against El Dorado County based on their policy
19

20 ³ See Monell v. Department of Social Services, 436 U.S. 658, 690, 694-95 (1978) (Section 1983
21 claim against a local governmental entity requires allegations that a specific policy, custom, or
22 practice of the entity was the “moving force” behind plaintiff’s alleged constitutional
23 deprivation). “[A] municipality is liable under Monell only if a municipal policy or custom was
24 the moving force behind the constitutional violation. In other words, there must be a direct causal
25 link between a municipal policy or custom and the alleged constitutional deprivation.” Villegas
26 v. Gilroy Garlic Festival Ass’n, 541 F.3d 950, 957 (9th Cir. 2008) (citations and internal
27 quotation marks omitted).

28 ⁴ Plaintiff should promptly seek the identity of Jane Doe from El Dorado County and/or the
EDCJ, and/or pursuant to the California Public Records Act, Calif. Gov’t. Code § 6250 et seq., or
by other means available to plaintiff. If access to the required information is denied or
unreasonably delayed, plaintiff may seek judicial intervention. Although “Doe” pleading is
disfavored in the federal courts, Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980),
amendment is allowed to substitute the true name of fictitiously named defendants, Merritt v.
County of Los Angeles, 875 F.2d 765 (9th Cir. 1989).

1 of opening clearly marked “legal mail” outside the presence of pretrial detainees.

2 C. Failure to State a Claim

3 As earlier noted, plaintiff’s Claims One, Two, and Five have already been dismissed from
4 this action.

5 Claim Three: For the reasons previously stated by the court, see ECF No. 28 at 9-10,
6 plaintiff’s allegations are insufficient to state a cognizable claim based on the quality of the food
7 provided at EDCJ. See SAC, ECF No. 33 at 12-4. Amendment has not cured the previously
8 identified deficiency. Plaintiff’s allegation that during the course of a year he gained 35 pounds
9 and became prediabetic due to the inadequate and “fatty salty” food remains too vague to
10 demonstrate that plaintiff’s injuries were caused by the objectively unreasonable conduct of a
11 specific defendant or the implementation of a specific EDCJ policy, custom or practice.

12 Claim Eight: For the reasons previously stated by the court, see ECF No. 28 at 15-7,
13 plaintiff’s allegations are insufficient to state a cognizable claim premised on inadequate medical
14 care and the refusal of EDCJ medical staff to provide plaintiff with a cane. Amendment has not
15 cured the previously identified deficiency. See SAC, ECF No. 33 at 12-4. Plaintiff’s allegation
16 that he was told “by a jail staff member . . . that the nurse did not want to give Spears a cane
17 because he was black” is also insufficient to state a cognizable equal protection claim.

18 Claim Ten: For the reasons previously stated by the court, see ECF No. 28 at 18-9,
19 plaintiff’s allegations are insufficient to state a cognizable claim premised on the denial of
20 adequate medical care. Amendment has not cured the previously identified deficiency. See SAC,
21 ECF No. 33 at 26-32. Plaintiff concedes that the types of medications he was prescribed and
22 when they were administered, as well as the frequency of his blood tests, had to be decided in the
23 first instance by EDCJ physician Dr. Lee. Id. at 29. Plaintiff’s allegations that EDCJ Medical
24 Manager Nurse Isaacson and Charge Nurse Bianchi sought to punish or retaliate against plaintiff,
25 id. at 28, 30, are not relevant under the Fourteen Amendment’s objective standard. See Gordon,
26 888 F.3d at 1124-25. The fact that plaintiff may have been prescribed other, more expensive (and
27 even more effective) medications by outside physicians does not in itself render the decisions
28 made by jail medical staff unreasonable. The same is true for plaintiff’s orthopedic shoes, which

1 his family ultimately provided. ECF No. 33 at 28. As to the CPAP machine, plaintiff alleges
2 only that he had used one prior to his incarceration, id. at 31, which is insufficient to demonstrate
3 that one was medically necessary during his incarceration or that failure to provide one violated
4 his rights.

5 D. Further Leave to Amend Would Be Futile

6 A pro se litigant should be provided an opportunity to amend, unless amendment would be
7 futile. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987). Here, plaintiff has already been
8 provided an opportunity to amend Claims Three, Eight, and Ten, and has been informed of the
9 standards for successfully pleading his claims. Plaintiff's continued failure to allege facts
10 sufficient to state a claim for relief indicates that no such facts are available. Accordingly, further
11 leave to amend is not appropriate.

12 IV. Conclusion

13 Accordingly, **IT IS HEREBY ORDERED** that:

14 1. In accordance with 28 U.S.C. § 1915A, this court has screened and found service of the
15 Second Amended Complaint (ECF No. 33) appropriate against the following defendants on the
16 following claims:

17 a. Fourteenth Amendment denial of due process Monell claim against El
18 Dorado County based on its policies and practices resulting in the frequent waking of
19 prisoners at night (Claim Four).

20 b. Fourteenth Amendment denial of equal protection based on racial
21 animus against EDCJ Sergeant Armstrong (Claim Six) based on depriving plaintiff of
22 regular grooming appointments and implements.

23 c. Fourteenth Amendment denial of equal protection based on racial
24 animus against EDCJ Officers Handy and Garcia based on their frequent and destructive
25 searches of plaintiff's cell (Claim Seven).

26 d. Fourteenth Amendment denial of adequate dental care and equal
27 protection claims against the EDCJ Dentist (Jane Doe) based on racial animus (Claim
28 Nine).

1 e. First and Sixth Amendment Monell claims against El Dorado County
2 based on its policy of opening clearly marked “legal mail” outside the presence of pretrial
3 detainees (Claim Eleven).

4 2. The Clerk of the Court is directed to send plaintiff one summons, five USM-285 forms.
5 a copy of the endorsed Second Amended Complaint (ECF No. 33), and an instruction sheet
6 informing plaintiff how to proceed in completing and submitting the necessary service
7 documents.

8 3. Within thirty (30) days after the filing date of this order, plaintiff shall complete the
9 attached Notice of Submission of Documents and submit the following documents to the court:

- 10 a. The completed Notice of Submission of Documents;
11 b. One completed summons;
12 c. Five completed USM-285 forms (one for each defendant);⁵ and
13 d. Six copies of the endorsed Second Amended Complaint (ECF No. 33)⁶

14 Further, for the foregoing reasons, **IT IS HEREBY RECOMMENDED** that plaintiff’s
15 Claims Three, Eight and Ten be dismissed without further leave to amend.

16 These findings and recommendations are submitted to the United States District Judge
17 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty (30) days
18 after being served with these findings and recommendations, plaintiff may file written objections
19 with the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings
20 and Recommendations.” The parties are advised that failure to file objections within the specified
21 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153
22 (9th Cir. 1991).

23 DATED: January 4, 2021

24 
25 ALLISON CLAIRE
26 UNITED STATES MAGISTRATE JUDGE

27 ⁵ Plaintiff is required to promptly obtain the identity of Jane Doe and seek leave of court to
28 substitute the EDCJ dentist’s actual name. See n.4, *supra*.

⁶ The United States Marshal will retain one copy of the Second Amended Complaint.

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIAN SPEARS,

Plaintiff,

v.

EL DORADO COUNTY SHERIFF'S
DEPARTMENT, et al.,

Defendants.

No. 2:15-cv-0165 MCE AC P

NOTICE OF SUBMISSION OF
DOCUMENTS

Plaintiff submits the following documents in compliance with the court's order filed

_____:

- _____ One completed summons form
- _____ Five completed USM-285 forms

_____ Date

_____ Plaintiff