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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRUCE BENTON,  
  
Plaintiff,  
  
v.  
  
EL DORADO COUNTY SHERIFF'S  
DEPARTMENT, et al.,  
  
Defendants.

No. 2:15-cv-0772 AC P

ORDER

I. Introduction

Plaintiff is a former state prisoner and former inmate at the El Dorado County Jail (EDCJ) in Placerville, California, who is challenging the conditions of his prior confinement at the EDCJ.<sup>1</sup> By order filed September 25, 2017, the court accorded plaintiff the option of proceeding on his First Amended Complaint (FAC), as construed by the court pursuant to 28 U.S.C. § 1915A, or submitting a proposed Second Amended Complaint (SAC). See ECF No. 13. The court provided guidance to plaintiff concerning how to state potentially cognizable claims against additional defendants. Id. at 3-8. The court deferred ruling on plaintiff's in forma pauperis

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<sup>1</sup> Plaintiff filed his original complaint with three other plaintiffs. See ECF No. 1. The court severed these actions, ECF No. 5, but found them related, ECF No. 6. Two plaintiffs declined to pursue their separate actions, which were each dismissed without prejudice. See Case No. 2:15-cv-0773 AC P (Anderson), and Case No. 2:15-cv-0774 AC P (Suddeth). Plaintiff Spears continues to pursue his separate action. See Case No. 2:15-cv-0165 AC P.

1 application because his place of incarceration was unclear. Id. at 2.

2 Plaintiff elected to proceed on his FAC, on his broad failure-to-protect claim against the  
3 El Dorado County Sheriff’s Department. However, plaintiff subsequently stated that he would  
4 prefer submitting a proposed SAC in an attempt to identify the numerous Doe defendants  
5 referenced in the FAC. Plaintiff will be accorded this option.

6 Plaintiff has submitted several in forma pauperis applications reflecting ongoing changes  
7 in his incarceration status; it appears that plaintiff has occasionally been reincarcerated at the  
8 EDCJ, but is otherwise homeless and uses a General Delivery address. Plaintiff’s request to  
9 proceed in forma pauperis premised on his unincarcerated status will be granted.

10 II. In Forma Pauperis Application

11 Plaintiff’s most recent change of address indicates that he is no longer incarcerated. See  
12 ECF No. 24.<sup>2</sup> Subsequent communication from plaintiff indicated that he was temporarily  
13 reincarcerated but anticipated an imminent release, see ECF No. 25, and he did not file a further  
14 change of address.

15 The court has reviewed the in forma pauperis application submitted by plaintiff when he  
16 was unincarcerated, see ECF No. 17, together with plaintiff’s other filings referencing his  
17 homeless status, see e.g. ECF No. 21 at 2 (“plaintiff is homeless living in a tent and is displaced  
18 often losing all of his property upon each arrest (parole violation) including the documents in this  
19 action”). The court finds that plaintiff has demonstrated he is unable to prepay fees and costs or  
20 give security for them, as required by 28 U.S.C. § 1915(a)(1). Therefore, plaintiff’s request to  
21 proceed in forma pauperis will be granted.

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23 ///

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25 <sup>2</sup> In addition, review of the inmate-locator websites operated by the California Department of  
26 Corrections and Rehabilitation (CDCR) and the EDCJ indicate that plaintiff is not incarcerated  
27 under the authority of either. See <http://inmatelocator.cdcr.ca.gov/search.aspx> and  
28 [http://edcapps.edcgov.us/sheriff/jail/jail\\_datalist.asp?start=21](http://edcapps.edcgov.us/sheriff/jail/jail_datalist.asp?start=21) See also Fed. R. Evid. 201  
(court may take judicial notice of facts that are capable of accurate determination by sources  
whose accuracy cannot reasonably be questioned).

1           III.    Further Election

2           Plaintiff will be again be given a choice between proceeding on his FAC or submitting a  
3 proposed Second Amended Complaint (SAC).

4           As previously explained in the court’s screening order, the FAC states a failure-to-protect  
5 claim against the El Dorado County Sheriff’s Department based on alleged policy, custom and/or  
6 practice. If plaintiff wishes to submit a proposed Second Amended Complaint (SAC), in an  
7 attempt to expand his failure-to-protect claim against individual defendants and/or to add claims  
8 against specific defendants for deliberate indifference to his serious medical needs, he will need  
9 to submit the proposed SAC to the court within forty-five (45) days.

10          Due to plaintiff’s homeless status and loss of paperwork, the court will send plaintiff,  
11 together with a copy of this order, copies of his FAC (ECF No. 12), and the court’s prior  
12 screening order (ECF No. 13).<sup>3</sup>

13           IV.    Conclusion

14          For the foregoing reasons, IT IS HEREBY ORDERED that:

15           1. Plaintiff’s request to proceed in forma pauperis as a pro se litigant, ECF No. 17, is  
16 granted.

17           2. Within forty-five (45) days after service of this order, plaintiff shall:

18                 a. Complete and return the attached Notice of Election, indicating whether  
19 plaintiff intends to proceed on his FAC, or a proposed SAC;

20                 b. If plaintiff seeks to proceed on a proposed SAC, he shall submit the proposed  
21 SAC with the Notice of Election.

22           3. The following motions are denied as moot: plaintiff’s motions for extended time, ECF  
23 Nos. 18, 21; plaintiff’s motion to proceed in forma pauperis as a jail detainee, ECF No. 22; and  
24 plaintiff’s motion for acceptance of an uncertified in forma pauperis application, ECF No. 23.


25          ////

26 \_\_\_\_\_  
27 <sup>3</sup> It appears that the court’s screening order incorrectly identified the date of the inmate assault  
28 incident as August 28, 2014; although this date is provided in the FAC, see ECF No. 12 at 7:12,  
the correct date appears to be April 28, 2014, see id. at 7:22 and 9:2; see also ECF No. 1.

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4. The Clerk of Court is directed to send plaintiff: (a) a copy of this order; (b) a copy of plaintiff's FAC, ECF No. 12 (14 pages); and (c) a copy of this court's screening order, ECF No. 13 (11 pages).

DATED: September 17, 2018

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE

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EL DORADO COUNTY SHERIFF'S  
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No. 2:15-cv-0772 AC P

NOTICE OF ELECTION

In compliance with the court's order filed \_\_\_\_\_, plaintiff elects to:

\_\_\_\_\_ Proceed on his First Amended Complaint (FAC) against  
defendant El Dorado County Sheriff's Department;

OR

\_\_\_\_\_ Proceed on a proposed Second Amended Complaint (SAC),  
submitted herewith.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Plaintiff