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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PATRICK BLACKSHIRE,
Plaintiff,
v.
SACRAMENTO COUNTY SHERIFF,
Defendant.

No. 2:15-cv-01123-MCE-CKD

MEMORANDUM AND ORDER

In the Findings and Recommendations filed on July 24, 2015 (ECF No. 9), the Magistrate Judge recommends that the Court dismiss Plaintiff Patrick Blackshire’s Third Amended Complaint (“TAC”) (ECF No. 8) with prejudice because it fails to state a claim upon which relief can be granted. Plaintiff, who is proceeding pro se and in forma pauperis, timely filed objections to the Findings and Recommendations. ECF No. 10. For the reasons that follow, the Findings and Recommendations are REJECTED.

The Findings and Recommendations suggest that the TAC fails to state a claim under 42 U.S.C. § 1983 and that Plaintiff alleges “only state law claims.” ECF No. 9 at 2. The Court disagrees. Although Plaintiff has not expressly invoked § 1983, he does not need to in order to adequately state a claim for relief under that statute. The United States Supreme Court made as much clear in a per curiam opinion last term. In Johnson v. City of Shelby, Mississippi, the Supreme Court explained that “no heightened

1 pleading rule requires plaintiffs seeking damages for violations of constitutional rights to
2 invoke § 1983 expressly in order to state a claim.” 135 S. Ct. 346, 347 (2014) (per
3 curiam). The issue in Johnson was whether the failure to invoke a specific legal theory
4 was fatal to the plaintiffs’ complaint. In rejecting that argument, the Supreme Court
5 reasoned that its prior decisions in Ashcroft v. Iqbal, 556 U.S. 662 (2009) and Bell
6 Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) were inapposite because they
7 concerned, to the contrary, “factual allegations a complaint must contain to survive a
8 motion to dismiss.” Id. More specifically, the Court explained:

9 A plaintiff . . . must plead facts sufficient to show that her
10 claim has substantive plausibility. Petitioners’ complaint was
11 not deficient in that regard. Petitioners stated simply,
12 concisely, and directly events that, they alleged, entitled them
13 to damages from the city. Having informed the city of the
14 factual basis for their complaint, they were required to do no
15 more to stave off threshold dismissal for want of an adequate
16 statement of their claim.

14 Id. That language, coupled with the long-established principle that pro se complaints
15 should be construed liberally,¹ precludes the Court from dismissing the TAC for want of
16 an adequate legal statement.

17 Here, Plaintiff alleges that despite having an order from a Sacramento County
18 Superior Court Judge to release Plaintiff from custody by midnight of May 11, 2015, the
19 Sacramento County Sheriff did not release Plaintiff until a week after that date. The
20 Ninth Circuit long ago made clear that “[a] prisoner’s petition for damages for excessive
21 custody can be a legitimate § 1983 claim.” Haygood v. Younger, 769 F.2d 1350, 1359
22 (9th Cir. 1985) (en banc). The Court finds that the TAC adequately sets forth a § 1983
23 excessive custody claim.

24 Finally, in his Objections to the Findings and Recommendations, Plaintiff states
25 that he cannot afford legal representation. ECF No. 10. The Court construes the
26 Objections as a motion for the appointment of counsel.

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¹ See Haines v. Kerner, 404 U.S. 519, 595-96 (1972) (per curiam).

1 Generally, a person has no right to counsel in civil actions.
2 However, a court may under “exceptional circumstances”
3 appoint counsel for indigent civil litigants pursuant to 28
4 U.S.C. § 1915(e)(1). When determining whether “exceptional
5 circumstances” exist, a court must consider “the likelihood of
6 success on the merits as well as the ability of the petitioner to
7 articulate his claims pro se in light of the complexity of the
8 legal issues involved.” Neither of these considerations is
9 dispositive and instead must be viewed together.

10 Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (citations omitted).

11 Both considerations warrant the appointment of counsel in this case. As to the
12 likelihood of success on the merits, Plaintiff has at least stated a claim for relief; if he is
13 able to produce evidence in support of the factual allegations in the TAC, he may well
14 prevail in this action. As to the second consideration, Plaintiff’s various filings indicate an
15 inability to articulate his claims. Although the Court finds that Plaintiff has adequately
16 stated a claim in his TAC, the Magistrate Judge properly dismissed Plaintiff’s first three
17 complaints (ECF Nos. 1, 4, 6) for failing to state a claim. See ECF Nos. 3, 5, 7. The
18 Court also notes that the TAC includes a booking summary, which bears Plaintiff’s name
19 and a reference to California Penal Code section 1372—a statute that relates to the
20 competency of criminal defendants. ECF No. 9 at 2. The Court therefore finds that
21 exceptional circumstances warrant the appointment of counsel in this action.²

22 Accordingly, it is HEREBY ORDERED that:

23 1. The Findings and Recommendations dated July 24, 2015 (ECF No. 9) are
24 REJECTED. Plaintiff may proceed on his Third Amended Complaint (ECF No. 8), which
25 adequately states a § 1983 excessive custody claim against Defendant Sacramento
26 County Sheriff.

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² The Court notes that Plaintiff has filed eight other cases in this District since 2012. See Case Nos. 2:12-cv-1803-JAM-GGH; 2:12-cv-02136-KJN; 2:12-cv-02137-KJM-DAD; 2:12-cv-02568-MCE-GGH; 2:15-cv-01122-KJN; 2:15-cv-01124-KJM-DAD; 2:15-cv-01125-KJM-DAD; 2:15-cv-01261-GEB-DAD. The appointment of counsel authorized by this Order is limited to representation in this action (i.e., case number 2:15-cv-01123-MCE-CKD).

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2. The Court construes Plaintiff's Objections to the Findings and Recommendations (ECF No. 10) as a motion for the appointment of counsel and hereby GRANTS that motion.

3. This action is referred to the Court's Alternative Dispute Resolution and Pro Bono Program Director Sujean Park to locate an attorney who is admitted to practice in this Court and is willing to accept the appointment.

4. When Plaintiff's appointed counsel serves Defendant Sacramento County Sheriff, Defendant will be required to comply with Federal Rule of Civil Procedure 12(a)

IT IS SO ORDERED.

Dated: September 18, 2015


MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT