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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN GRESCHNER,  
  
Plaintiff,  
  
v.  
  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION, et al.,  
  
Defendants.

No. 2:15-cv-1663 MCE AC P

ORDER

Pursuant to 42 U.S.C. § 1997e(g)(1),<sup>1</sup> defendant Jeffrey Rohlfig, through counsel, waives his right to reply to the First Amended Complaint (FAC) filed by plaintiff, a state prisoner, on April 22, 2019. Pursuant to 42 U.S.C. § 1997e(g)(2) and the reasons set forth below, defendant Rohlfig is directed to file a reply to the FAC.

On October 2, 2019 this court directed the United States Marshal to serve a copy of the summons, FAC and related materials on four defendants, including CDCR physician Rohlfig. ECF No. 21. Rohlfig states that he received service on November 1, 2019. ECF No. 24 at 1. No other defendant has yet appeared in this action.

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<sup>1</sup> While it is clear this is the statute upon which defendant relies, defendant incorrectly cites to 42 U.S.C. § 1997(d)(g) and §(e)(g). ECF No. 24.

1 42 U.S.C. § 1997e(g)(1) provides:

2 Any defendant may waive the right to reply to any action brought by  
3 a prisoner confined in any jail, prison, or other correctional facility  
4 under section 1983 of this title or any other Federal law.  
5 Notwithstanding any other law or rule of procedure, such waiver  
6 shall not constitute an admission of the allegations contained in the  
7 complaint. No relief shall be granted to the plaintiff unless a reply  
8 has been filed.

9 Under 42 U.S.C. § 1997e(g)(2), “[t]he court may require any defendant to reply to a  
10 complaint brought under this section if it finds that the plaintiff has a reasonable opportunity to  
11 prevail on the merits.”

12 The court’s screening of this case pursuant to 42 U.S.C. § 1997(c), particularly its analysis  
13 of plaintiff’s allegations against defendant Rohlfig, demonstrated that plaintiff has a reasonable  
14 opportunity to prevail on the merits of his Eighth Amendment medical deliberate indifference  
15 claim against Rohlfig. The court stated in pertinent, ECF No. 18 at 4-6:

16 Defendant Dr. Jeffrey Rolfing,<sup>2</sup> a CDCR physician at HDSP,  
17 provided plaintiff’s aftercare. Plaintiff alleges that upon his return to  
18 HDSP after surgery, Dr. Rolfing “was deliberately indifferent to my  
19 serious medical needs when he refused to change my filthy  
20 dressings.” ECF No. 15 at 5. Plaintiff alleges that his surgical site  
21 became infected as a result of the allegedly defective hernia mesh,  
22 yet Dr. Rolfing refused to treat it, “making plaintiff change dressings  
23 and do self care due to no alternative.” *Id.* More specifically, plaintiff  
24 alleges, *id.* (with minor edits):

25 Doctor Rolfing stated to plaintiff: We don’t change the  
26 dressings. We let them fall off on their own. This was after  
27 plaintiff told Dr. Rolfing that plaintiff was forced to put toilet  
28 paper over the open stomach wound which was oozing  
infectious pus, as the original surgical dressing was filled  
with infected pus. Plaintiff knew that he wasn’t going to  
receive any help from Dr. Rolfing, so he told him to give  
plaintiff dressing so he could self care. This caused the  
infection to rage in plaintiff for 6-8 months, and the surgical  
incision site would not close for over 90 days. This caused  
permanent nerve & tissue damages, pain and suffering. . . .  
chronic, intractable pain & suffering, requiring life-long pain  
medications, which is worsening as time passes. Plaintiff  
suffers from mental pain & emotional suffering due to the  
unrelenting burning nerve pain & damages, w/sleep  
deprivation, daily life function impairment via cognitive  
disabilities, mobility impairment, and rage.

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2 The court used the incorrect spelling of defendant Rohlfig’s name as it was set forth in the FAC.

1 The court finds plaintiff's allegations against defendant Roling  
2 sufficient to state a cognizable Eighth Amendment claim for  
3 deliberate indifference to plaintiff's serious medical needs.  
4 Specifically, a viable claim is stated by the allegations that Dr.  
5 Roling knowingly refused to treat plaintiff's open, pus-filled  
6 surgical site, resulting in a prolonged infection of the site, scarring,  
7 and chronic pain. See Farmer v. Brennan, 511 U.S. 825, 845, 847  
8 (1994) (a prison official acts with deliberate indifference if "he  
9 knows that inmates face a substantial risk of serious harm and  
10 disregards that risk by failing to take reasonable measures to abate  
11 it"). Although further development of the facts may show that  
12 plaintiff's decision to "self care" deprived Dr. Roling of a  
13 reasonable opportunity to assess the seriousness of plaintiff's  
14 medical needs and/or to treat those needs, the allegations as framed  
15 are sufficient to state an Eighth Amendment deliberate indifference  
16 claim against Roling.

17 Notwithstanding the statutory option of a defendant in a prisoner civil rights actions to  
18 waive his or her right to reply, it is the policy of this court to routinely require such replies, as  
19 demonstrated by the language of the court's recently adopted Electronic Service orders (directing  
20 that "[i]f a defendant waives service or is personally served, he will be required to reply to the  
21 complaint. 42 U.S.C. § 1997e(g)(2)."). Moreover, the Ninth Circuit Court of Appeals has  
22 expressly urged district courts to require replies from defendants in prisoner civil rights cases "to  
23 the aid the court" in its determinations. See e.g. Turner v. Morris, 165 F.3d 918 (9th Cir. 1998)  
24 (Table), 1998 WL 833616 (9th Cir. 1998).

25 Accordingly, IT IS HEREBY ORDERED that defendant Rohlring shall file and serve his  
26 reply to plaintiff's First Amended Complaint within twenty-one (21) days after the filing date of  
27 this order.

28 DATED: December 16, 2019

  
ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE