

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

HAROLD HUNTER,  
Plaintiff,  
v.  
DOROTHY H. DO-WILLIAMS, et al.,  
Defendants.

No. 2:15-cv-1971 KJN PC

ORDER

Plaintiff, a state prisoner proceeding pro se, requested that this action be dismissed because he plans to re-file the case at a later date. Plaintiff states that he needed an emergency injunction to stop custody from moving him upstairs and ignoring plaintiff’s mobility issues. However, plaintiff did not receive the injunction and he has now been moved upstairs. Plaintiff states that his current pleading does not cover several current events or include defendants he would like to add, and he did not include any individuals as “John Does.” Plaintiff claims that the court would not like him to add a lot of current violations that he has uncovered because he thinks that is called a “shotgun” pleading, so he thinks it best to withdraw his case and re-file it later when he can address “everything and everyone.” (ECF No. 26 at 2.) For the following reasons, the court declines to dismiss the action at this time, but grants plaintiff an opportunity to either file an amended complaint or voluntarily dismiss the action after having benefit of the instant order.

1 First, plaintiff is correct that “shotgun” pleadings are not allowed under the Federal Rules.  
2 Rule 20(a) provides that all persons may be joined in one action as defendants if “any right to  
3 relief is asserted against them jointly, severally, or in the alternative with respect to or arising out  
4 of the same transaction, occurrence, or series of transactions or occurrences” and “any question of  
5 law or fact common to all defendants will arise in the action.” Fed. R. Civ. P. 20(a)(2). Thus, it  
6 is unclear whether plaintiff will be able to re-file his action to raise all of his prospective claims in  
7 one pleading. Plaintiff may only do so if he complies with Rule 20, and if he raises such claims  
8 within the statute of limitations period.

9 Second, federal law determines when a claim accrues, and “[u]nder federal law, a claim  
10 accrues when the plaintiff knows or should know of the injury that is the basis of the cause of  
11 action.” Douglas v. Noelle, 567 F.3d 1103, 1109 (9th Cir. 2009) (citation omitted); Maldonado v.  
12 Harris, 370 F.3d 945, 955 (9th Cir. 2004). Because section 1983 contains no specific statute of  
13 limitations, federal courts should apply the forum state’s statute of limitations for personal injury  
14 actions. Jones v. Blanas, 393 F.3d 918, 927 (9th Cir. 2004); Maldonado, 370 F.3d at 954.  
15 California’s statute of limitations for personal injury actions was extended to two years effective  
16 January 1, 2003. Cal. Civ. Proc. Code § 335.1; Jones, 393 F.3d at 927; Maldonado, 370 F.3d at  
17 954-55. However, the new statute of limitations period does not apply retroactively. Maldonado,  
18 370 F.3d at 955. California law also tolls for two years the limitations period for inmates  
19 “imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a  
20 term less than for life.” Cal. Civ. Proc. Code § 352.1.<sup>1</sup>

21 Third, plaintiff is required to first exhaust his administrative remedies as to each claim  
22 before he raises such claims in federal court. The Prison Litigation Reform Act (“PLRA”)  
23 provides that “[n]o action shall be brought with respect to prison conditions under section 1983 . .  
24 . , or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility  
25 until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Proper

26 \_\_\_\_\_  
27 <sup>1</sup> “The California courts have read out of the statute the qualification that the period of  
28 incarceration must be ‘for a term less than for life’ in order for a prisoner to qualify for tolling.”  
Jones, 393 F.3d at 927 n.5 (citations omitted).

1 exhaustion of available remedies is mandatory, Booth v. Churner, 532 U.S. 731, 741 (2001), and  
2 “[p]roper exhaustion demands compliance with an agency’s deadlines and other critical  
3 procedural rules[.]” Woodford v. Ngo, 548 U.S. 81, 90 (2006). Thus, plaintiff must exhaust all  
4 available administrative remedies<sup>2</sup> prior to bringing such claims in this or any subsequent action.

5 Fourth, plaintiff has paid the filing fee in this action. If plaintiff chooses to voluntarily  
6 dismiss this action, he will lose the benefit of such payment, and will be required to pay the filing  
7 again for any subsequently-filed action.

8 Fifth, the court construes plaintiff’s filing as a request to withdraw his motion for  
9 injunctive relief as moot.

10 Sixth, at the present time, no operative pleading is effective. On June 9, 2016, plaintiff’s  
11 pleading was dismissed, and he was granted leave to file an amended pleading. In such screening  
12 order, plaintiff was provided the legal standards for pursuing the claims raised by plaintiff. (ECF  
13 No. 24.) Thus, the undersigned will not repeat those standards in this order. Plaintiff is granted  
14 the opportunity to file an amended pleading that comports with Rule 20 and with the court’s prior  
15 order, or, he may opt to voluntarily dismiss this action. Plaintiff is not required to file an  
16 amended pleading, but if he chooses to proceed with this action, he must file an amended

---

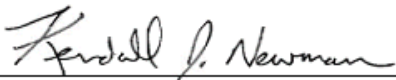
17 <sup>2</sup> On January 28, 2011, California prison regulations governing inmate grievances were revised.  
18 Cal. Code Regs. tit. 15, § 3084.7. Now, inmates in California proceed through three levels of  
19 appeal to exhaust the appeal process: (1) formal written appeal on a CDC 602 inmate appeal  
20 form, (2) second level appeal to the institution head or designee, and (3) third level appeal to the  
21 Director of the California Department of Corrections and Rehabilitation (“CDCR”). Cal. Code  
22 Regs. tit. 15, § 3084.7. Under specific circumstances, the first level review may be bypassed. Id.  
23 The third level of review constitutes the decision of the Secretary of the CDCR and exhausts a  
24 prisoner’s administrative remedies. See id. § 3084.7(d)(3). Since 2008, medical appeals have  
25 been processed at the third level by the Office of Third Level Appeals for the California  
26 Correctional Health Care Services. A California prisoner is required to submit an inmate appeal  
27 at the appropriate level and proceed to the highest level of review available to him. Butler v.  
28 Adams, 397 F.3d 1181, 1183 (9th Cir. 2005); Bennett v. King, 293 F.3d 1096, 1098 (9th Cir.  
2002). Since the 2011 revision, in submitting a grievance, an inmate is required to “list all staff  
members involved and shall describe their involvement in the issue.” Cal. Code Regs. tit. 15,  
§ 3084.2(3). Further, the inmate must “state all facts known and available to him/her regarding  
the issue being appealed at the time,” and he or she must “describe the specific issue under appeal  
and the relief requested.” Cal. Code Regs. tit. 15, §§ 3084.2(a)(4). An inmate now has thirty  
calendar days to submit his or her appeal from the occurrence of the event or decision being  
appealed, or “upon first having knowledge of the action or decision being appealed.” Cal. Code  
Regs. tit. 15, § 3084.8(b).

1 complaint that complies with the June 9, 2016 order as well as this order. Plaintiff is cautioned  
2 that failure to respond to this order will result in the dismissal of this action.

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. Plaintiff withdraws his motion for injunctive relief (ECF No. 25) as moot;
- 5 2. Plaintiff's motion for voluntary dismissal (ECF No. 26) is denied without prejudice;
- 6 3. Within thirty days from the date of this order, plaintiff shall file the attached Notice of  
7 Election form, choosing either to file an amended complaint, or to renew his request to  
8 voluntarily dismiss this action; and
- 9 4. The Clerk of the Court is directed to send plaintiff the form for filing a civil rights  
10 action by a prisoner.

11 Dated: November 1, 2016

12   
13 KENDALL J. NEWMAN  
14 UNITED STATES MAGISTRATE JUDGE

15 hunt1971.59den  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GRADY HARRIS,  
Plaintiff,  
v.  
JEFF MACOMBER, et al.,  
Defendants.

No. 2:16-cv-0830 KJN P

NOTICE OF ELECTION

Plaintiff hereby submits the following document in compliance with the court's orders

\_\_\_\_\_ Amended Complaint

OR

\_\_\_\_\_ Plaintiff chooses to voluntarily dismiss this action.

DATED:

\_\_\_\_\_  
Plaintiff