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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KRZYSZTOF F. WOLINSKI,
Plaintiff,
v.
J. LEWIS, et al.,
Defendants.

No. 2:17-cv-0583 MCE AC P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se, seeks relief under 42 U.S.C. § 1983. The case removed to federal court by defendants. ECF No. 2. It has been referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Before the court is plaintiff’s second amended complaint (“SAC”). For the reasons stated below, this action should proceed on Claims One and Two against specified defendants only. The undersigned will recommend that other named defendants be dismissed.

I. SCREENING REQUIREMENT

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1)-(2).

1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v.
2 Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir.
3 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably
4 meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at
5 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an
6 arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989);
7 Franklin, 745 F.2d at 1227.

8 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon
9 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in
10 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467
11 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt
12 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under
13 this standard, the court must accept as true the allegations of the complaint in question, Hosp.
14 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light
15 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v.
16 McKeithen, 395 U.S. 411, 421 (1969).

17 II. SECOND AMENDED COMPLAINT

18 The SAC names fourteen individual defendants, all of whom were employed at California
19 Health Care Facility ("CHCF") during the period in question. See ECF No. 69 at 1-3, 8-11. The
20 factual allegations, however, link only six of those individual defendants to the alleged violations
21 of plaintiff's rights. The SAC presents two claims, both of which are suitable to proceed on the
22 following bases as to the individuals identified below.

23 A. Claim One

24 1. Allegations

25 In Claim One, plaintiff alleges that on or around July 12, 2016, defendant P.T.W. Golsh, a
26 psychiatric technician at CHCF, violated his First Amendment and Eighth Amendment rights.
27 ECF No. 69 at 4, 12-13. Plaintiff alleges that after he had filed a grievance against Golsh for
28 sleeping on the job – which led to plaintiff being denied shower and computer / law library access

1 – Golsh retaliated by denying plaintiff food and his special diet prescription, as well as his
2 medications. Id. at 4, 12.

3 Plaintiff further alleges that in response to defendant Golsh’s actions, he covered his cell
4 windows as a form of “peaceful protest.” ECF No. 69 at 4, 12. This led to defendants Golsh,
5 Penafloida, and Longshore entering plaintiff’s cell and assaulting him, despite the fact that he
6 was already on the floor and in restraints. Id. at 12-13. Plaintiff’s front tooth was broken; he
7 suffered internal bleeding and PTSD; he had to have multiple “emergency repairs,” and he had to
8 have his spleen removed. Id. at 4, 13.

9 2. Discussion

10 a. Plaintiff Has Presented a Cognizable First Amendment Claim

11 “It is well-established that, among the rights they retain, prisoners have a First
12 Amendment right to file prison grievances.” Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir.
13 2009) (citing Rhodes v. Robinson, 408 F.3d 559, 566 (9th Cir. 2005). “Retaliation against
14 prisoners for their exercise of this right is itself a constitutional violation, and prohibited as a
15 matter of ‘clearly established law.’” Brodheim, 584 F.3d at 1269 (citing Rhodes, 408 F.3d at 566;
16 Pratt v. Rowland, 65 F.3d 802, 806 & n.4 (9th Cir. 1995)).

17 The allegations that defendant Golsh denied plaintiff food, prescribed special meals, and
18 medications because plaintiff had filed a grievance against him states a viable First Amendment
19 retaliation claim. Defendant Golsh will be ordered to respond.

20 b. Plaintiff Has Presented a Cognizable Eighth Amendment Claim

21 “In its prohibition of ‘cruel and unusual punishments,’ the Eighth Amendment places
22 restraints on prison officials, who may not . . . use excessive physical force against prisoners.”
23 Farmer v. Brennan, 511 U.S. 825, 832 (1994) (citing Hudson v. McMillian, 503 U.S. 1 (1992)).
24 “[W]henver prison officials stand accused of using excessive physical force in violation of the
25 [Eighth Amendment], the core judicial inquiry is . . . whether force was applied in a good-faith
26 effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” Hudson,
27 503 U.S. at 6-7 (brackets added) (referencing Whitley v. Albers, 475 U.S. 312 (1986)).

28 Plaintiff’s allegations of an assault leading to spleen removal, internal bleeding and a

1 broken tooth are sufficient to support and Eighth Amendment excessive force claim against
2 Golsh, Penaflorida, and Longshore. They will be ordered to respond.

3 B. Claim Two

4 1. Allegations

5 In Claim Two, plaintiff alleges that while he was being beaten by Golsh, Penaflorida, and
6 Longshore, defendants Lieutenant R. Ward and Sergeants Singh and M. Gomez failed to
7 intervene and protect him. ECF No. 69 at 5, 15-16. Instead, these defendants “just [stood]
8 outside [my] room watching and doing nothing . . . until [I] pass[ed] out from lack of air and
9 kicking of [my] head.” Id. at 5 (brackets added). Plaintiff again points out that because he was in
10 hand and leg restraints and was pinned to the floor, there was no reason for defendants to beat
11 him in this way. Id.

12 2. Discussion

13 Police officers have a duty to intervene when fellow officers violate the constitutional
14 rights of a suspect or other citizen. Cunningham v. Gates, 229 F.3d 1271, 1289 (9th Cir. 2000)
15 (citation omitted). At the same time, however, they may only be held liable for failure to
16 intervene if they had an opportunity to do so. See id. at 1289-90 (citing Bruner v. Dunaway, 684
17 F.2d 422, 426-27 (6th Cir. 1982) (holding officers who were not present at time of alleged assault
18 could not be held liable in a Section 1983 action)). The failure to intervene violates a prisoner’s
19 Eighth Amendment rights. See Robins v. Meecham, 60 F.3d 1436, 1442 (9th Cir. 1995).

20 Claim Two adequately alleges facts showing that defendants Ward, Singh, and Gomez
21 witnessed the beating, had an opportunity to intervene and stop their co-workers’ assault on
22 plaintiff, and failed to do so. These facts state a viable Eighth Amendment failure to protect
23 claim against Ward, Singh, and Gomez. They will therefore be ordered to respond.

24 III. REMAINING DEFENDANTS

25 In addition to the defendants against whom plaintiff has stated a claim for the reasons
26 already explained, numerous other individuals are identified as defendants. See ECF No. 69 at 1-
27 3. There are no facts alleged in Claims One and Two to suggest that any of these individuals
28 caused the alleged constitutional violations or were involved in any way in the events described in

1 Claim One and Claim Two. Accordingly, plaintiff has not stated any claim for relief against the
2 following defendants: J. Lewis; J. Porras; D. Brown; J. Cheeseman; D. Celaya; B. Barrett;
3 Constacio; and A. Lopez.

4 Plaintiff has twice amended the complaint. See ECF Nos. 24, 69 (amended complaints).
5 He has been specifically told what he needed to do in order to state viable claims against the
6 named defendants. ECF No. 64 at 3-6 (order screening first amended complaint). Despite this
7 fact, plaintiff has failed to present cognizable claims against the majority of the named
8 defendants. Accordingly, the undersigned finds that providing plaintiff with a third opportunity
9 to amend the complaint would be futile and would not serve the interests of justice. See
10 Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) (“A district court may deny leave to
11 amend when amendment would be futile.”). It will therefore be recommended that all defendants
12 against whom plaintiff has not stated viable claims be dismissed and that the case proceed as
13 screened above.

14 CONCLUSION

15 Accordingly, IT IS HEREBY ORDERED that:

16 1. In accordance with 28 U.S.C. § 1915A and 42 U.S.C. § 1997e(c), the second amended
17 complaint (ECF No. 69) has been screened, and the viable claims have been identified.

18 2. The second amended complaint states cognizable claims of violations of First and/or
19 Eighth Amendment rights against the following defendants, all of whom were employees at
20 California Health Care Facility during the relevant period:

- 21 • W. Golsh, a psychiatric technician;
- 22 • J. Penaflorida, a psychiatric technician;
- 23 • R. Longshore, a psychiatric technician;
- 24 • R. Ward, a correctional lieutenant;
- 25 • R. Singh, a correctional sergeant, and
- 26 • M. Gomez, a correctional sergeant / supervisor.

27 3. Defendants will be required to reply to the second amended complaint. 42 U.S.C. §
28 1997e(g)(2).

1 By separate order, after the District Judge assigned to this matter rules on the findings and
2 recommendations herein, the court shall direct these defendants to file a response to the second
3 amended complaint.

4 IT IS FURTHER RECOMMENDED that the following individuals named as defendants
5 in this action be DISMISSED for failure to state claims upon which relief may granted: J. Lewis;
6 J. Porras; D. Brown; J. Cheeseman; D. Celaya; B. Barrett; Constacio, and A. Lopez.

7 These findings and recommendations are submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
9 after being served with these findings and recommendations, any party may file written
10 objections with the court and serve a copy on all parties. Such a document should be captioned
11 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
12 objections shall be served and filed within fourteen days after service of the objections. The
13 parties are advised that failure to file objections within the specified time may waive the right to
14 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 DATED: August 18, 2023

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17 ALLISON CLAIRE
18 UNITED STATES MAGISTRATE JUDGE
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