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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARLTON DEWAYNE FIELDS,
Plaintiff,
v.
DIRECTOR OF CDCR, et al.,
Defendants.

No. 2:18-cv-0653 MCE KJN P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding pro se and in forma pauperis, with an action filed pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s amended complaint filed October 9, 2018. (ECF No. 18.)

Named as defendants are Secretary of the California Department of Corrections and Rehabilitation (“CDCR”) Scott Kernan, California State Prison-Corcoran (“Corcoran”) Warden M.V. Sexton and Corcoran Counselor K. Matta. The complaint raises two claims. The undersigned first addresses claim two.

In claim two, plaintiff alleges that defendant Kernan enacted an unconstitutional policy that mixes inmates from the sensitive needs yard (“SNY”) with general population (“GP”) inmates. Plaintiff raised this claim in the original complaint filed March 26, 2018. (ECF No. 1 at 4.) On May 4, 2018, the undersigned recommended that this claim be dismissed on the grounds that plaintiff had not exhausted administrative remedies as to this claim. (ECF No. 8.) On June

1 15, 2018, the Honorable Morrison C. England adopted the May 4, 2018 findings and
2 recommendations. (ECF No. 14.)

3 In the pending amended complaint, plaintiff alleges that he has now exhausted
4 administrative remedies as to his claim challenging defendant Kernan's policy of mixing GP and
5 SNY inmates. (ECF No. 18 at 4.) Attached to the amended complaint is a Third Level Appeal
6 Decision, dated September 21, 2018, addressing plaintiff's administrative appeal challenging the
7 policy of mixing GP and SNY inmates. (Id. at 8.)

8 "The 'law of the case' rule ordinarily precludes a court from re-examining an issue
9 previously decided by the same court, or a higher appellate court, in the same case." Moore v.
10 James H. Matthews & Co., 682 F.2d 830, 833 (9th Cir. 1982), citing IB Moore's Federal Practice,
11 0.404(1), at 404-09 (2d ed. 1980). "Although the law of the case rules does not bind a court as
12 absolutely as *res judicata*, and should not be applied 'woodenly' when doing so would be
13 inconsistent with 'considerations of substantial justice,' the discretion of a court to review earlier
14 decisions should be exercised sparingly so as not to undermine the salutary policy of finality that
15 underlies the rule." Moore, 682 F.2d at 833-34, citing Lathan v. Brinegar, 506 F.2d 677, 691 (9th
16 Cir. 1974) (en banc); United States v. Fullard-Leo, 156 F.2d 756, 757 (9th Cir. 1946).

17 Prisoners are required to exhaust the available administrative remedies prior to filing suit.
18 Jones v. Bock, 549 U.S. 199, 211 (2007); McKinney v. Carey, 311 F.3d 1198, 1199–1201 (9th
19 Cir. 2002) (per curiam). If, however, a plaintiff files an amended complaint adding *new* claims,
20 the plaintiff may proceed on the *new* claims if those claims were fully exhausted before tendering
21 the amended complaint for filing. Rhodes v. Robinson, 621 F.3d 1002, 1006-07 (9th Cir. 2010)
22 (emphasis added). As long as those new claims are fully exhausted at the time the amended
23 complaint is filed, it does not matter whether the new claims arose before or after the date on
24 which the initial complaint was filed; the claims can proceed as long as they are *new claims that*
25 *were not alleged in the initial complaint*, and are fully exhausted prior to the filing of the
26 amended complaint. See Cano v. Taylor, 739 F.3d 1214, 1220–21 (9th Cir. 2014) (allowing
27 amended complaint to proceed on new claims that arose prior to the date on which the initial
28 complaint was filed) (emphasis added); Akhtar v. Mesa, 698 F.3d 1202, 1210 (9th Cir. 2012)

1 (allowing amended complaint alleging new claims that arose after the initial complaint was filed).

2 While plaintiff has now administratively exhausted his claim challenging the policy of
3 mixing GP and SNY inmates, this claim is not a new claim, raised for the first time in the
4 amended complaint. As discussed above, plaintiff raised this claim in the original complaint.
5 Thus, plaintiff is required to file a new civil rights action raising this claim. For these reasons, the
6 undersigned finds that Judge England's June 15, 2018 order bars plaintiff from re-raising his
7 claim challenging the policy of mixing of GP and SNY inmates, pursuant to the law of the case
8 doctrine.

9 Turning to claim one, plaintiff alleges that defendants Kernan, Sexton and Matta violated
10 his Eighth Amendment right to be protected from harm by other inmates by denying his request
11 for single cell housing. Plaintiff alleges that he made defendants aware of his safety needs
12 through administrative appeals. Plaintiff alleges that he has been involved in numerous cell fights
13 and "battery" of which defendants are aware.

14 Attached to the amended complaint is defendant Sexton's April 12, 2017 response to
15 plaintiff's second level grievance requesting single cell status. In relevant part, defendant Sexton
16 states,

17 ICC elected to continue you on double cell status per Classification
18 Committee Chrono dated February 22, 2017, which states in part,
19 "ICC dated 9/1/16 elected to continue S on double cell. S has
20 remained double cell without further documented incidents.
21 Therefore this ICC elects to continue S on D/C with compatible
22 inmate with safety concerns. S meets departmental D/C policy,
23 noting S has no significant history of in-cell predatory/assaultive
24 behavior toward his cellmates." Your in-cell disciplinary history was
25 also reviewed, "S has the following history of in-cell assaultive
26 behavior toward cellmates: RVR dated 3/9/13 for Battery on an
27 Inmate, RVR dated 9/18/15 for Fighting and RVR dated 8/26/'6 for
28 Battery on a Prisoner." You do not have any custody related case
factors which would preclude you from double cell housing.

(ECF No. 18 at 18.)

25 Also attached is a February 27, 2017 response to plaintiff's first level grievance requesting
26 single cell status. (Id. at 20.) Although it is not clear who prepared this response, the response
27 states that on February 27, 2017, defendant Matta interviewed plaintiff regarding his grievance.

28 (Id.)

1 The undersigned clarifies that plaintiff is now housed at California State Prison-
2 Sacramento (“CSP-Sac”). After reviewing the Director’s Level Decision denying plaintiff’s
3 grievance challenging the policy of mixing GP and SNY inmates, it appears that plaintiff was
4 subject to this policy while housed at CSP-Sac. (Id. at 8.) The decision states that the at-issue
5 policy became effective January 8, 2018, which appears to have been after plaintiff transferred to
6 CSP-Sac. (Id.)

7 Because plaintiff became subject to the policy mixing GP and SNY inmates after his
8 transfer to CSP-Sac, it appears that his failure to protect claim alleged in claim one is based on
9 events that occurred at Corcoran and is unrelated to the policy challenged in claim two.

10 In claim one, plaintiff appears to allege that his failure to receive single cell status while
11 housed at Corcoran violated his Eighth Amendment rights. Prison officials have a duty under the
12 Eighth Amendment to avoid excessive risks to inmate safety. See, e.g., Farmer v. Brennan, 511
13 U.S. 825, 834 (1994). To state a claim under the Eighth Amendment, plaintiff must allege
14 defendants were “deliberate[ly] indifferen[t]” to “conditions posing a substantial risk of serious
15 harm.” Id. Deliberate indifference is more than mere negligence, but less than purpose or
16 knowledge. See id. at 836. A prison official acts with deliberate indifference only if he “knows
17 of and disregards an excessive risk to inmate health and safety; the official must both be aware of
18 facts from which the inference could be drawn that a substantial risk of serious harm exists, and
19 he must also draw the inference.” Id. at 837.

20 The exhibits attached to the amended complaint demonstrate that plaintiff’s requests for
21 single cell status, while housed at Corcoran, were denied in February 2017 and April 2017.
22 Defendant Sexton denied plaintiff’s request for single cell housing in April 2017 because plaintiff
23 had been double celled since September 1, 2016, with no in-cell incidents. Defendant Sexton
24 cited three previous incidents where plaintiff was found to have assaulted cellmates, but found
25 that these incidents did not warrant single cell housing.

26 Plaintiff does not allege that he was assaulted by any cellmate or experienced any other
27 safety problems with cellmates, while housed at Corcoran, *after* the denial of his administrative
28 grievances in February 2017 and April 2017. For these reasons, the undersigned does not find

1 that plaintiff has demonstrated that defendants acted with deliberate indifference to plaintiff's
2 safety needs when they denied his requests for single cell housing while he was housed at
3 Corcoran. For these reasons, claim one is dismissed. Plaintiff is granted one final opportunity to
4 cure the pleading defects discussed above with respect to claim one.

5 In conclusion, the undersigned recommends that claim two, challenging the policy of
6 mixing SNY and GP inmates, be dismissed pursuant to the law of the case doctrine. Plaintiff was
7 subject to this policy following his transfer to CSP-Sac. Plaintiff is granted leave to amend with
8 respect to claim one, i.e., the claim challenging defendants' denial of his requests for single cell
9 housing while plaintiff was housed at Corcoran.

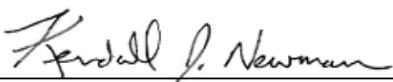
10 In accordance with the above, IT IS HEREBY ORDERED that claim one challenging
11 defendants' denial of plaintiff's request for single cell housing while plaintiff was housed at
12 Corcoran is dismissed with leave to amend; plaintiff is granted thirty days to file a second
13 amended complaint; failure to file a second amended complaint within that time will result in a
14 recommendation of dismissal of this action; and

15 IT IS HEREBY RECOMMENDED that claim two, challenging the policy of mixing SNY
16 and GP inmates, be dismissed pursuant to the law of the case doctrine.

17 These findings and recommendations are submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
19 after being served with these findings and recommendations, plaintiff may file written objections
20 with the court and serve a copy on all parties. Such a document should be captioned
21 "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that
22 failure to file objections within the specified time may waive the right to appeal the District
23 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 Dated: November 27, 2018

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26 Fields653.1


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE