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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER STEWART,

Plaintiff,

v.

LAW FU, ASSOCIATE WARDEN MELBA S.
STARR, PAROLE OFFICER KEN DIXON, et
al.,

Defendants.

No. 2:19-cv-00286-JAM-CKD

**ORDER GRANTING DEFENDANTS
DIXON AND STARR'S MOTION
TO DISMISS**

Christopher Stewart ("Plaintiff") sued Associate Warden Melba S. Starr and Parole Officer Ken Dixon (collectively, "Defendants"), as well as a host of Sacramento County employees, alleging excessive force, deliberate indifference to medical needs, and deprivation of due process in violation of his Fourth, Eighth, and Fourteenth Amendment rights when he was in the Sacramento County Jail and, later, the California Department of Corrections and Rehabilitation Deuel Vocational Institute ("DVI"). See Second Am. Compl. ("SAC"), ECF No. 32. Plaintiff also alleges a handful of state law claims. Id.

1 Defendants move to dismiss: (1) Plaintiff's first cause of
2 action against Dixon for battery and excessive force; and
3 (2) Plaintiff's sixth cause of action against Starr for
4 deliberate indifference to a serious medical need. See Mot. to
5 Dismiss ("Mot."), ECF No. 37. Doing so would dismiss both Dixon
6 and Starr as defendants. Defendants argue that each of the
7 claims against them fail to state a claim upon which relief can
8 be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).
9 Id. Plaintiff opposes the motion. See Opp'n, ECF No. 41.

10 For the reasons set forth below, the Court GRANTS
11 Defendants' Motion to Dismiss.¹

12 13 I. FACTUAL BACKGROUND

14 On November 4, 2017, Plaintiff was involved in two
15 motorcycle accidents. SAC ¶¶ 8-10. He suffered several serious
16 injuries, including a broken arm, broken leg, broken knee, and
17 broken hip. SAC ¶ 11. After the second accident, Plaintiff
18 received medical treatment, which included the insertion of
19 plates to hold his fractures in place. SAC ¶ 18. Plaintiff was
20 still undergoing treatment and expected future surgeries when he
21 was arrested by Parole Officer Dixon on February 9, 2018. SAC
22 ¶¶ 18, 20. However, the Sacramento County Jail refused to accept
23 Plaintiff that day, citing medical reasons. SAC ¶ 21.

24 Plaintiff was arrested again on February 23, 2018. SAC
25 ¶ 24. This time the Sacramento County Jail accepted Plaintiff

26
27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for March 23, 2021.

1 and placed him in a medical ward. SAC ¶¶ 24, 26. During each
2 arrest, Plaintiff asked Dixon not to handcuff him behind his back
3 because of his injuries. SAC ¶¶ 22, 25. Dixon ignored
4 Plaintiff's requests. Id. Eventually, Plaintiff was transferred
5 to DVI in San Joaquin County. SAC ¶ 47. There, Plaintiff was
6 assigned to Dr. Fu for medical care. SAC ¶ 47. Dr. Fu treated
7 Plaintiff from April 2, 2018, until August 9, 2018. SAC ¶¶ 50-
8 63, 71-72. Plaintiff alleges that much of Dr. Fu's treatment was
9 inadequate. Id.

10 On June 18, 2018, Plaintiff appeared in front of the
11 classification committee, which was headed by Associate Warden
12 Starr. SAC ¶ 64. The committee denied Plaintiff "Extended Stay
13 Privileges" and a transfer to a medical facility. Id. The
14 committee report noted that Plaintiff had serious medical needs
15 that might mandate specialized transfer considerations. SAC
16 ¶ 65. The report also noted that the specialized transfer
17 considerations were not dispositive and, ultimately, decided not
18 to transfer Plaintiff because CDCR staff had not completed
19 processing. Id. Specifically, CDCR staff had neither
20 interviewed Plaintiff nor conducted "casework review." Id.
21 Plaintiff appealed the decision on June 29, 2018. SAC ¶ 67.

22 On July 16, 2018, Plaintiff filed a disability accommodation
23 request. SAC ¶ 68. Starr responded a few days later, indicating
24 that Plaintiff had not raised any disability-related access
25 issues that might cause injury or serious harm. Id. Plaintiff
26 also appealed this decision. SAC ¶ 69. CDCR dismissed
27 Plaintiff's appeal and submitted his complaint to the Health Care
28 Grievance Coordinator. SAC ¶ 70. Plaintiff never heard from the

1 coordinator. Id.

2 Plaintiff alleges that his medical conditions have worsened
3 as a direct result of his manner of incarceration and the
4 deliberate indifference to his medical needs. SAC ¶¶ 73-76. For
5 instance, the plate in Plaintiff's hip disconnected and the bone
6 in his wrist died. SAC ¶¶ 74-75. Plaintiff's current medical
7 providers have informed him that the delay in treatment caused by
8 his time in the Sacramento County Jail and DVI caused
9 irreversible and permanent injury. SAC ¶¶ 78, 80.

11 II. OPINION

12 A. Legal Standard

13 Federal Rule of Civil Procedure 8(a)(2) requires "a short
14 and plain statement of the claim showing that the pleader is
15 entitled to relief." A suit must be dismissed if the plaintiff
16 fails to "state a claim upon which relief can be granted." Fed.
17 R. Civ. Proc. 12(b)(6). To defeat a Rule 12(b)(6) motion to
18 dismiss, a plaintiff must "plead enough facts to state a claim
19 to relief that is plausible on its face." Bell Atlantic Corp.
20 v. Twombly, 550 U.S. 544, 570 (2007).

21 B. Analysis

22 1. Parole Officer Dixon

23 Plaintiff's first cause of action alleges a claim of
24 battery and a claim of excessive force pursuant to 42 U.S.C.
25 § 1983. See SAC at 12-15. The two claims are interrelated
26 because a plaintiff "must prove unreasonable force as an element
27 of [battery]." Edson v. City of Anaheim, 63 Cal.App.4th 1269,
28 1272 (1998). The reasonableness of the force is generally

1 assessed by carefully weighing "the nature and quality of the
2 intrusion on the individual's Fourth Amendment interests against
3 the countervailing governmental interests at stake." Graham v.
4 Connor, 490 U.S. 386, 396 (1989) (internal quotation marks and
5 citation omitted). It is an objective inquiry that pays
6 "careful attention to the facts and circumstances of each
7 particular case." Id. If an officer carries out a seizure that
8 is reasonable, considering all the relevant circumstances, there
9 is no valid excessive force claim. Cnty. of L.A., Cal. v.
10 Mendez, 137 S. Ct. 1539, 1547 (2017). Nor is there a valid
11 battery claim. See Edson, 63 Cal.App.4th at 1273 ("[B]y
12 definition, a prima facie battery is not established unless and
13 until plaintiff proves unreasonable force was used.").

14 Thus, the Court's inquiry begins and ends with its
15 reasonableness assessment. Plaintiff does not contest the
16 lawfulness of either the February 9, 2018, arrest or the
17 February 23, 2018, arrest. Opp'n at 3. Plaintiff similarly
18 does not dispute that Dixon had a right to touch him in
19 effectuating the arrests and that handcuffs are used in the
20 ordinary course of lawful arrests. Id. At issue is whether
21 handcuffing Plaintiff behind his back was unreasonable. See SAC
22 ¶¶ 22, 25; Opp'n at 3-4. However, Plaintiff fails to cite to
23 any caselaw in support of the argument that doing so might
24 constitute an excessive use of force. Plaintiff merely argues
25 that the action was unreasonable because he asked Dixon not to
26 handcuff him from behind because of his injuries. This is
27 insufficient. Plaintiff does not allege that, once handcuffed,
28 he told Dixon that he was, in fact, in pain. And Plaintiff's

1 allegation that being handcuffed by Dixon from behind caused
2 "damage to the surgical repairs" is vague and unsupported by any
3 specific facts or competent evidence. SAC ¶¶ 22, 25. Plaintiff
4 only details injuries caused by the Sacramento County Jail
5 deputies when they handcuffed him and transported him to and
6 from court. See SAC ¶ 40. Those injuries are separate and
7 apart from any caused by Dixon.

8 Dixon's conduct need not have been the "least intrusive
9 means," but must only have been "within that range of
10 conduct . . . identif[ied] as reasonable." Billington v. Smith,
11 292 F.3d 1177, 1188-89 (9th Cir. 2002). Handcuffing a person
12 behind their back is routine and possibly even required. The
13 action was, therefore, within the range of reasonable conduct.
14 The facts alleged in the SAC do not support Plaintiff's claim
15 that Dixon used a degree of force or method of handcuffing
16 beyond what was required. Accordingly, Plaintiff's first cause
17 of action for battery and excessive force against Parole Officer
18 Dixon is DISMISSED.

19 2. Associate Warden Starr

20 Plaintiff's sixth cause of action alleges deliberate
21 indifference to his medical needs. See SAC at 31-33. An
22 incarcerated person may state a § 1983 violation of the Eighth
23 Amendment by correctional employees if he alleges "acts or
24 omissions sufficiently harmful to evidence deliberate
25 indifference to [his] serious medical needs." Estelle v.
26 Gamble, 429 U.S. 97, 106 (1976). A determination of deliberate
27 indifference involves examining two elements: "the seriousness
28 of the prisoner's medical need and the nature of the defendant's

1 response to that need." McGuckin v. Smith, 974 F.2d 1050, 1059
2 (9th Cir. 1992), overruled on other grounds by WMX Techs., Inc.
3 v. Miller, 104 F.3d 1133 (9th Cir. 1997).

4 For a defendant's response to a serious medical need to
5 rise to the level of deliberate indifference, there must be a
6 purposeful act or failure to act on the part of the defendant.
7 Id. at 1061. For instance, "indifference is manifested by
8 prison doctors in their response to the prisoner's needs or by
9 prison guards intentionally denying or delaying access to
10 medical care or intentionally interfering with the treatment
11 prescribed." Gamble, 429 U.S. at 104-05. "An accident,
12 although it may produce added anguish, is not on that basis
13 alone to be characterized as wanton infliction of unnecessary
14 pain" sufficient to demonstrate deliberate indifference, "nor
15 does an inadvertent failure to provide adequate medical care" by
16 itself create a cause of action under § 1983. Id. at 105.
17 "Mere negligence in diagnosing or treating a medical condition,
18 without more, does not violate a prisoner's Eighth Amendment
19 rights." Hutchinson v. United States, 838 F.2d 390, 394 (9th
20 Cir. 1988).

21 As an initial matter, the seriousness of Plaintiff's injury
22 is not in dispute. Upon his transfer to DVI, Plaintiff was
23 referred to Dr. Fu for medical care and it was quickly
24 determined that he needed surgery to correct a loose plate in
25 his wrist. SAC ¶¶ 47, 51-52. What is in dispute is whether
26 Associate Warden Starr's subsequent actions amounted to
27 deliberate indifference. Plaintiff's specific allegations
28 against Starr are that Starr, as the head of the classification

1 committee, failed to properly vet Plaintiff's case and
2 ultimately denied the classification change. SAC ¶ 64.
3 Plaintiff requested the transfer to another facility because he
4 felt that DVI could not meet his medical needs. See SAC ¶¶ 61,
5 67, 69.

6 These facts do not support the allegation that Starr
7 intentionally denied or delayed Plaintiff's access to medical
8 care or intentionally interfered with the treatment prescribed
9 by the medical staff at DVI. See Gamble, 429 U.S. at 104-05.
10 Instead, Starr denied Plaintiff's request to be transferred to
11 another facility. SAC ¶¶ 64, 68. This does not constitute
12 deliberate indifference to an incarcerated person's serious
13 medical needs. An incarcerated person does have a right to the
14 prison facility of his choice. Williams v. Wood, 223 F.App'x
15 670, 671 (9th Cir. 2007) (citing Olim v. Wakinekona, 461 U.S.
16 238, 245 (1983)). And a denial of a grievance is not, in and of
17 itself, a constitutional violation. Mann v. Adams, 855 F.2d
18 639, 640 (9th Cir. 1998) ("There is no legitimate claim of
19 entitlement to a grievance procedure."). Moreover, the SAC
20 describes the medical treatment Plaintiff received while at the
21 facility. See SAC ¶¶ 50, 52-53, 55, 57, 59-60. It presents no
22 facts that suggest Starr intentionally interfered with or
23 prevented that treatment.

24 Plaintiff's SAC does not include sufficient factual matter
25 to state a claim of deliberate indifference to medical needs
26 against Starr that is plausible on its face. See Ashcroft v.
27 Iqbal, 556 U.S. 662, 678 (2009). Accordingly, Plaintiff's sixth
28 cause of action against Assistant Warden Starr is DISMISSED.

1 C. Leave to Amend

2 Under Fed. R. Civ. Proc. 15(a), leave to amend "shall be
3 freely given when justice so requires." The Ninth Circuit has
4 "repeatedly stressed" that the Court must adhere to "the
5 underlying purpose of Rule 15 . . . to facilitate decision on
6 the merits, rather than on the pleadings or technicalities."
7 Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000).
8 Accordingly, leave to amend should be granted, "unless [the
9 Court] determines that a pleading could not possibly be cured by
10 the allegation of other facts." Id. (citing Doe v. U.S., 58
11 F.3d 494, 497 (9th Cir. 1995)).

12 Plaintiff has requested leave to amend. Opp'n at 4.
13 However, the Court finds that amendment would be futile.
14 Plaintiff has had three opportunities to file sufficiently pled
15 claims against these two Defendants. See Compl., ECF No. 1;
16 First Am. Compl., ECF No. 11; SAC, ECF No.32. Moreover,
17 Plaintiff, in his opposition, had the opportunity to set forth
18 additional facts in support of the specific causes of action
19 challenged by Defendants here, but failed to add anything to
20 suggest they can be cured by amendment.

21 Accordingly, the Court DENIES Plaintiff's request for leave
22 to amend the SAC.

23

24 III. ORDER

25 For the reasons set forth above, the Court GRANTS WITHOUT
26 LEAVE TO AMEND Defendants' Motion to Dismiss. The Court:

27 1. DISMISSES as defendants Parole Officer Ken Dixon and
28 Associate Warden Melba S. Starr;

