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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID E. EDWARDS,

 Plaintiff,

 v.

M. KUERSTEN and CDCR,

 Defendants.

No. 2:21-cv-00259-DAD-EFB (PC)

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. This matter proceeds on his Second Amended Complaint (SAC). ECF No. 45. Now before the court is defendant Kuersten’s motion to partially dismiss that complaint. ECF No. 46. The court also addresses plaintiff’s addition of the California Department of Corrections and Rehabilitation (CDCR) as a defendant in the SAC. ECF No. 45.

I. Background

Plaintiff filed his original complaint against defendant Kuersten on February 10, 2021. ECF No. 1. The court dismissed the complaint, and plaintiff filed his First Amended Complaint (FAC) on June 4, 2021. ECF No. 11. Defendant Kuersten subsequently moved to dismiss the FAC, which this court granted in part and denied in part. ECF Nos. 33, 38. Specifically, the court dismissed plaintiff’s claim for injunctive relief as moot because plaintiff had been

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1 transferred from CSP-Solano. Plaintiff was granted leave to amend his complaint in order to
2 allege that he has a reasonable expectation of being returned to CSP-Solano.¹ ECF No. 38.

3 Plaintiff filed his SAC on December 21, 2022. ECF No. 45. In the SAC, plaintiff alleges
4 that he suffers from REM sleep disorder. *Id.* at 4. According to plaintiff, while he was housed at
5 CSP-Solano, he was denied, in deliberate indifference to his serious medical needs, a reasonable
6 accommodation of a lower bunk chrono. *Id.* at 4-6. Plaintiff also adds CDCR as a defendant, and
7 seeks injunctive relief against CDCR. *Id.* at 3-6.

8 **II. Motion to Partially Dismiss SAC and Additional Defendant**

9 *A. Legal Standard for Motion to Dismiss*

10 A complaint may be dismissed for “failure to state a claim upon which relief may be
11 granted.” Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss for failure to state a claim, a
12 plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell*
13 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim has “facial plausibility when the
14 plaintiff pleads factual content that allows the court to draw the reasonable inference that the
15 defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
16 (citing *Twombly*, 550 U.S. at 556). The plausibility standard is not akin to a “probability
17 requirement,” but it requires more than a sheer possibility that a defendant has acted unlawfully.
18 *Iqbal*, 556 U.S. at 678.

19 Dismissal under Rule 12(b)(6) may be based on either: (1) lack of a cognizable legal
20 theory, or (2) insufficient facts under a cognizable legal theory. *Chubb Custom Ins. Co.*, 710 F.3d
21 at 956. Dismissal also is appropriate if the complaint alleges a fact that necessarily defeats the
22 claim. *Franklin v. Murphy*, 745 F.2d 1221, 1228-1229 (9th Cir. 1984). In resolving a Rule
23 12(b)(6) motion to dismiss, the court must construe the complaint in the light most favorable to
24 the plaintiff and accept all well-pleaded factual allegations as true (and any reasonable inference
25 supported by the facts). *Broam v. Bogan*, 320 F.3d 1023, 1028 (9th Cir. 2003).

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28 ¹ Defendant Kuersten is employed at CSP-Solano.

1 For purposes of dismissal under Rule 12(b)(6), the court generally considers only
2 allegations contained in the pleadings, exhibits attached to the complaint, and matters properly
3 subject to judicial notice, and construes all well-pleaded material factual allegations in the light
4 most favorable to the nonmoving party. *Chubb Custom Ins. Co. v. Space Sys./Loral, Inc.*, 710
5 F.3d 946, 956 (9th Cir. 2013); *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012).

6 *B. Analysis*

7 This court previously dismissed plaintiff's claim for an injunction ordering defendant
8 Kuersten to give plaintiff a lower bunk chrono for the duration of his incarceration at CSP-Solano
9 as moot. Plaintiff had been transferred to another prison and accordingly, defendant Kuersten no
10 longer had the power to provide or deny a lower bunk chrono. ECF No. 38. Plaintiff was granted
11 "leave to amend to allow [him] the opportunity to allege that he has a reasonable expectation of
12 being returned to CSP-Solano." *Id.* Thereafter, he filed his SAC which states:

13 Plaintiff was transferred to another prison because CSP Solano changed Plaintiff's
14 medical assessment from "High Risk" to "Medium Risk". According to medical
15 staff at CTF, Plaintiff's current location, when Plaintiff turned 65 on October 8,
16 2022 he became "High Risk" again. Plaintiff's annual review is in February 2023
17 and he will be put up for transfer back to CSP Solano due to the medical
18 assessment of "High Risk". For the above reasons, of not including REM Sleep
19 Disorder in Defendants' organizations guidelines and Plaintiff's high probability
20 of being returned to CSP Solano the injunctive relief sought by Plaintiff is not
21 moot.

22 ECF No. 45 at 5. In his motion, defendant Kuersten argues that these allegations do not state a
23 claim to injunctive relief. Defendant Kuersten also maintains that any amendment would be
24 futile, and that plaintiff should be denied leave to amend.

25 Defendant Kuersten is correct that plaintiff has not alleged facts showing a reasonable
26 expectation of being returned to CSP-Solano. At the time plaintiff filed the SAC, plaintiff was
27 housed at the Correctional Training Facility (CTF) in Soledad, and he remains there today,
28 months after the time (February 2023) plaintiff alleges he will be put up for transfer back to CSP-
Solano.² Plaintiff's conclusory, unsupported allegations that "he will be put up for transfer back
to CSP Solano" is not sufficient to allege facts showing a reasonable expectation of being

² Plaintiff's address of record remains CTF-Soledad, and his location via the CDCR inmate locator website reflects the same.

1 returned to CSP-Solano, where defendant Kuersten would again have the power to provide or
2 deny a lower bunk chrono. Nor does plaintiff cite to any CDCR regulations or medical record
3 that indicates he is likely to be transferred. ECF No. 45. As such, plaintiff's claim for injunctive
4 relief against defendant Kuersten remains moot, and must be dismissed. *See Darring v.*
5 *Kincheloe*, 783 F.2d 874, 866 (9th Cir. 1986) (finding inmate's claim for injunctive relief moot
6 where he was transferred to another prison without either a "reasonable expectation" or
7 "demonstrated probability" that he would return to the initial prison that was the subject of his
8 complaint).

9 C. *Screening of SAC's Inclusion of CDCR*

10 Notably, plaintiff did not argue in his opposition to defendant's motion, that he has a
11 reasonable expectation of being transferred back to CSP-Solano. ECF No. 47. Rather, he
12 switched his focus from defendant Kuersten to the agency itself and maintains that he is entitled
13 to injunctive relief against the CDCR, which he names as an additional defendant in his SAC.
14 Plaintiff seeks to require CDCR "to recognize REM Sleep Disorder as a medical condition that
15 necessitates the issuing of a lower bunk chrono" on behalf of "any inmate housed at CDCR by
16 being assigned to sleep on a top bunk while suffering from REM Sleep Disorder." *Id.* at 1-2; *see*
17 *also* ECF No. 45 at 3. According to plaintiff, no CDCR institution recognizes REM Sleep
18 Disorder as a medical condition requiring a lower bunk chrono. *Id.* at 2.

19 Pursuant to 28 U.S.C. § 1915A(a), this court must screen plaintiff's claims in the SAC
20 against potential defendant CDCR. To begin with, CDCR is not a "person" subject to suit under
21 section 1983. *See Brown v. California Dep't of Corr.*, 554 F.3d 747, 752 (9th Cir. 2009) (finding
22 that "[t]he district court correctly held that the California Department of Corrections . . . [was]
23 entitled to Eleventh Amendment immunity."). Thus, any claim against CDCR must be dismissed
24 without leave to amend.

25 Furthermore, plaintiff's claim for injunctive relief on behalf of all inmates, regardless of
26 defendant, does not "state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at
27 570. Pro se litigants such as plaintiff have no authority to represent anyone other than
28 themselves, and lack the representative capacity to file motions and other documents on behalf of

1 other prisoners. *See Johns v. County of San Diego*, 114 F.3d 874, 877 (9th Cir. 1997) (“[A] non-
2 lawyer ‘has no authority to appear as an attorney for others than himself,’”) (quoting *C.E. Pope*
3 *Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987)); *see also Simon v. Hartford Life,*
4 *Inc.*, 546 F.3d 661, 664 (9th Cir. 2008) (non-attorney plaintiff may not attempt to pursue claim on
5 behalf of others in a representative capacity). To the extent that plaintiff is bringing a claim for
6 injunctive relief on behalf of himself (ECF No. 45 at 5), however, he must name as defendant a
7 person in his or her official capacity such as the prison warden.

8 **III. Conclusion**

9 In sum, because plaintiff has not adequately alleged that he has a reasonable expectation
10 of being returned to CSP-Solano, his claim for injunctive relief against defendant Kuersten must
11 be dismissed. Plaintiff may seek leave to amend his complaint should he be transferred to CSP-
12 Solano during the pendency of this litigation. For the reasons stated above, plaintiff’s claims
13 against newly-named defendant CDCR must be dismissed with prejudice. Plaintiff may not bring
14 a claim on behalf of other inmates, but to the extent plaintiff seeks injunctive relief personal to
15 him, he must name a defendant other than CDCR.

16 **IV. Recommendation**


17 For the foregoing reasons, it is RECOMMENDED that:

- 18 1. Defendant Kuersten’s motion to dismiss plaintiff’s claim for injunctive relief
19 against him be GRANTED. This claim should be dismissed with leave to amend should plaintiff
20 be returned to CSP-Solano;
- 21 2. Plaintiff’s claims against newly-named defendant CDCR be DISMISSED WITH
22 PREJUDICE; and
- 23 3. Plaintiff be given leave to amend his complaint within thirty days of any order
24 adopting these findings and recommendations, to name a proper defendant for any claim of
25 injunctive relief personal to him.

26 These findings and recommendations are submitted to the United States District Judge
27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
28 after being served with these findings and recommendations, any party may file written

1 objections with the court and serve a copy on all parties. Such a document should be captioned
2 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
3 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
4 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). In
5 his objections petitioner may address whether a certificate of appealability should issue in the
6 event he files an appeal of the judgment in this case. *See* Rule 11, Federal Rules Governing §
7 2255 Cases (the district court must issue or deny a certificate of appealability when it enters a
8 final order adverse to the applicant).

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10 Dated: August 4, 2023.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE