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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY WEST, JR.,

Plaintiff,

v.

C. CORTEZ, et al.,

Defendants.

No. 22-cv-01897-EFB (PC)

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. Plaintiff filed his first amended complaint (FAC) on March 6, 2023. ECF No. 14. The court screened the FAC and found that plaintiff’s allegations that defendants subjected him to repeated x-rays and searches without justification stated potentially cognizable claims under the Fourth and Eighth Amendments. ECF No. 18. The court dismissed plaintiff’s First Amendment, equal protection, and due process claims with leave to amend. *Id.* Plaintiff did not file a subsequent amended complaint, and those claims therefore remain dismissed. Now before the court is defendants’¹ motion to partially dismiss the FAC pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 22. For the reasons that follow, the undersigned recommends that the court grant in part and deny in part defendants’ motion.²

¹ The motion to dismiss was filed by defendants Crow and Cortez, and subsequently joined by defendant Kibler. ECF No. 23. Counsel for defendants uses both “Crow” and “Crowe”; this court will use “Crow.”

² Defendants filed an answer to plaintiff’s initial complaint (ECF No. 17) but have filed

1 **I. Background**

2 At the time of the incidents in the FAC, plaintiff was incarcerated at High Desert State
3 Prison. ECF No. 14 at 2. Plaintiff alleges that on February 9, 2020, he was removed from a visit
4 with his fiancée by defendants Cortez and Crow, who stated that they believed plaintiff was
5 attempting to smuggle drugs into the institution. *Id.* at 3-4. Defendants then submitted plaintiff
6 to two x-rays; after plaintiff stated that his family had “radiology problems”, defendants ran
7 plaintiff through the x-ray machine additional times. *Id.*

8 Defendants accused plaintiff of swallowing drugs, and then strip-searched him and forced
9 him to put on a “potty-watch jump suit.” *Id.* Defendant Crow told plaintiff he had seen him
10 swallowing drugs on a camera. *Id.* at 5. Plaintiff was handcuffed and shackled and taken to a
11 hospital for 24 hours, where he produced several bowel movements that did not contain any
12 contraband. *Id.* at 7-8.

13 Plaintiff alleges that after he was returned to prison, defendants Kibler and Crow
14 continued to subject him to x-rays. *Id.* at 8. Plaintiff’s cell was “trashed”, and his property was
15 searched. *Id.* at 9-10. Plaintiff was labeled a “snitch” by other inmates, based on his unexplained
16 absence from his cell, and he was subject to a knife attack. *Id.* at 10, 12. Plaintiff’s fiancée
17 subsequently broke off their engagement, based on trauma caused by the drug-smuggling
18 investigation. *Id.* at 12. Based on these alleged actions, plaintiff brought various claims for relief
19 (*id.* at 16); his claims under the Fourth and Eighth Amendment remain. ECF No. 18.

20 **II. Legal Standard**

21 A complaint may be dismissed for “failure to state a claim upon which relief may be
22 granted.” Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss for failure to state a claim, a
23 plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell*
24 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim has “facial plausibility when the
25 plaintiff pleads factual content that allows the court to draw the reasonable inference that the
26 defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
27 (citing *Twombly*, 550 U.S. at 556). The plausibility standard is not akin to a “probability
28 _____ this motion to dismiss in lieu of an answer to plaintiff’s FAC.

1 requirement,” but it requires more than a sheer possibility that a defendant has acted unlawfully.
2 *Iqbal*, 556 U.S. at 678.

3 Dismissal under Rule 12(b)(6) may be based on either: (1) lack of a cognizable legal
4 theory, or (2) insufficient facts under a cognizable legal theory. *Chubb Custom Ins. Co.*, 710 F.3d
5 at 956. Dismissal also is appropriate if the complaint alleges a fact that necessarily defeats the
6 claim. *Franklin v. Murphy*, 745 F.2d 1221, 1228-1229 (9th Cir. 1984). In resolving a Rule
7 12(b)(6) motion to dismiss, the court must construe the complaint in the light most favorable to
8 the plaintiff and accept all well-pleaded factual allegations as true (and any reasonable inference
9 supported by the facts). *Broam v. Bogan*, 320 F.3d 1023, 1028 (9th Cir. 2003).

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

15 **III. Analysis**

16 **A. Eleventh Amendment Immunity**

17 Plaintiff’s FAC seeks damages against defendants in both their individual and official
18 capacities. ECF No. 14 at 2-3. Defendants seek dismissal of plaintiff’s claims for damages
19 against them in their official capacity as barred by the Eleventh Amendment to the United States
20 Constitution. The Eleventh Amendment bars section 1983 suits against a state unless the state
21 has waived its sovereign immunity. *Will v. Mich. Dep’t. of State Police*, 491 U.S. 58, 66 (1989).
22 A suit against a state official in his or her official capacity is treated as a suit against the state and
23 is barred by the Eleventh Amendment. *Id.* at 71. However, suits against state officials in their
24 official capacities seeking injunctive relief are not treated as against the state and thus are not
25 barred. *Id.* at 71 n. 10.

26 On the other hand, “[c]learly, under § 1983, a plaintiff may sue a state officer in his
27 individual capacity for alleged wrongs committed by the officer in his official capacity.” *Price v.*
28 *Akaka*, 928 F.2d 824, 828-29 (9th Cir. 1990). Thus, to determine whether a section 1983 suit for

1 damages against a state official is barred by the Eleventh Amendment, a court must determine
2 whether the plaintiff has sued the official in his or her official capacity. In making that
3 determination, the court looks to the basis of the claims asserted and the nature of the relief
4 sought, and not just the label applied by plaintiff. *Id.*; see also *Shoshone-Bannock Tribes v. Fish*
5 *& Game Comm'n*, 42 F3d 1278, 1284 (9th Cir. 1994). A plaintiff's claim for damages against a
6 defendant indicates that the defendant has been sued in his or her individual capacity.

7 Here, plaintiff indicated in his FAC that he intended to sue defendants in both their
8 individual and official capacities. Because the state has not consented to the suit, plaintiff's
9 claims against defendants in their official capacities seeking money damages are barred by the
10 Eleventh Amendment and must be dismissed. Plaintiff's claims seeking money damages against
11 defendants in their individual capacities remain to be adjudicated. Plaintiff's request for
12 injunctive relief against defendants in their individual and official capacities is addressed *infra*.

13 **B. Claims for Injunctive and Declaratory Relief**

14 As noted, plaintiff brings claims against defendants for injunctive and declaratory relief.
15 ECF 14 at 16-17. According to defendants, because plaintiff has been transferred from High
16 Creek State Prison,³ his claims for declaratory and injunctive relief against defendants should be
17 dismissed as moot. See *Darring v. Kincheloe*, 783 F.2d 874, 866 (9th Cir. 1986) (finding
18 inmate's claim for injunctive relief moot where he was transferred to another prison without
19 either a "reasonable expectation" or "demonstrated probability" that he would return to the initial
20 prison that was the subject of his complaint); see also *Dilley v. Gunn*, 64 F.3d 1365, 1368-69 (9th
21 Cir. 1995) (finding claims for injunctive relief moot after transfer); *Alvarez v. Hill*, 667 F.3d
22 1061, 1064 (9th Cir. 2012) (finding claims for declaratory relief moot after transfer).

23 Where a prisoner is seeking injunctive relief with respect to conditions of confinement,
24 the prisoner's transfer to another prison renders the request for injunctive relief moot, unless there
25 is some evidence of being transferred back. See *Prieser v. Newkirk*, 422 U.S. 395, 402-03 (1975);
26 *Johnson v. Moore*, 948 F.2d 517, 519 (9th Cir. 1991) (per curiam). Here, plaintiff's transfer

27 _____
28 ³ Plaintiff has been transferred to the California Substance Abuse Treatment Facility.
ECF No. 14 at 1.

1 renders his claims for declaratory and injunctive relief against officials at High Desert State
2 Prison moot as there is no indication that plaintiff will be transferred back there.

3 In his opposition to defendants' motion, plaintiff argues that because he has a lengthy
4 sentence, there is a "high probability" that he will cross paths with defendants again. ECF No. 24
5 at 2. This conclusory allegation, however, does not amount to a "reasonable expectation" or a
6 "demonstrated probability" that plaintiff would either be transferred back to High Desert State
7 Prison, or that defendants might someday work at an institution where plaintiff is housed.
8 *Darring*, 783 F.2d at 866. Thus, plaintiff's claims for declaratory and injunctive relief against
9 defendants are moot and must be dismissed.

10 **C. Plaintiff's Additional Request for Declaratory Relief**

11 In addition to his claims against defendants for declaratory and injunctive relief, plaintiff
12 brings a general request for "an order granting declaratory relief as may be appropriate." ECF
13 No. 14 at 16. Defendants maintain that this request should be dismissed because even if plaintiff
14 prevailed, the verdict would be a finding of a violation of plaintiff's constitutional rights, making
15 declaratory relief unnecessary.

16 Declaratory relief is a remedy, not an independent cause of action. *See, e.g., Morongo*
17 *Band of Mission Indians v. California State Board of Equalization*, 849 F.2d 1197, 1201 (9th Cir
18 1988). At this juncture of the lawsuit, it is premature for the court to decide that declaratory relief
19 of any kind would not be, under any circumstances, an appropriate remedy. Thus, defendants'
20 motion to dismiss plaintiff's general request for declaratory relief is denied.

21 **IV. Order and Recommendation**

22 It is hereby ORDERED that the Clerk of Court randomly assign a district judge to this
23 action.

24 It is RECOMMENDED that defendants' motion to dismiss be GRANTED WITH
25 PREJUDICE in part and DENIED in part as follows:

- 26 1. Plaintiff's claims for damages against defendants in their official capacities be
27 dismissed as barred by the Eleventh Amendment;
- 28 2. Plaintiff's claims for injunctive and declaratory relief against defendants be

1 dismissed because they are moot due to plaintiff's transfer to another institution;

2 3. Plaintiff's general request for "declaratory relief as may be appropriate" be
3 allowed to stand.

4 These findings and recommendations are submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
6 after being served with these findings and recommendations, any party may file written
7 objections with the court and serve a copy on all parties. Such a document should be captioned
8 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
9 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
10 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

11
12 Dated: December 20, 2023


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

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