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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JORGE L. RUBIO,)	No. C 10-1963 JSW (PR)
)	
Plaintiff,)	ORDER GRANTING MOTION
)	FOR SUMMARY JUDGMENT; ON
v.)	PENDING MOTIONS
)	
MIKE KANALAKIS, et al.,)	
)	(Docket Nos. 35, 49, 50, 55)
Defendants.)	
_____)	

INTRODUCTION

Plaintiff filed this pro se civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff is civilly committed at Coalinga State Hospital pursuant to California’s Sexually Violent Predator Act, Cal. Welf. & Inst. Code §§ 6600, et seq. (“SVPA”). After Defendants’ motion to dismiss was granted in part, Plaintiff’s remaining claims concern the conditions of his confinement at the Monterey County Jail between November 26 and December 17, 2007. Defendants have filed a motion for summary judgment, which Plaintiff opposes. For the reasons discussed below, the motion for summary judgment is GRANTED, and the other pending motions are also resolved.

BACKGROUND

Plaintiff was convicted of sex offenses in 1996 for which he served a sentence of

1 over eight years in state prison. After the completion of his sentence, he underwent
2 commitment proceedings pursuant to the SVPA in Monterey County Superior Court, and
3 he was committed to Coalinga State Hospital. Thereafter, his commitment has been
4 periodically renewed at subsequent SVPA proceedings. He was housed at the Monterey
5 County Jail for the SVPA proceedings and then returned to Coalinga. Following
6 Defendants' motion to dismiss, Plaintiff's only remaining claims concern one of his
7 stays at the Monterey County Jail, between November 26 and December 17, 2007, for
8 his SVPA proceedings.

9 When Plaintiff arrived at the jail on November 26, 2007, he was initially placed in
10 a "safety" cell. (Compl. Ex. B at 4.)¹ He complained to an officer that the cell was dirty
11 with feces and had a strong odor. (*Id.*) The officer allowed him to wait outside the cell
12 while it was cleaned. (*Id.*) After several hours he was placed in a "booking cell" with
13 another inmate. (*Id.*) The cell was cold and his request for a blanket was denied. (*Id.*)

14 The next day, November 27, a third inmate was placed in the cell. (*Id.*) An
15 officer told Plaintiff that he would be moved to the general population, but Plaintiff
16 objected, explaining that as a civilly-committed SVP he should be separated from
17 inmates awaiting criminal prosecution. (*Id.* at 4-5.) The officer loudly identified him as
18 a "sexually violent predator." (*Id.*) Plaintiff then explained to a Sergeant that he should
19 not be housed in the general population, and, after the Sergeant verified Plaintiff's status
20 with the District Attorney's Office, he moved Plaintiff to his own "Isolation cell"
21 separate from the general population. (*Id.* at 5; Bass Decl. ¶ 16.) Jail administrators
22 considered the cell "Administrative Segregation" because SVPs were housed there in
23 order to protect them, not to punish them. (Bass Decl. ¶ 16.) Plaintiff remained there for
24 the following three weeks until he returned to Coalinga. (*Id.*)

25 Also on November 27, Plaintiff also asked for his legal papers, and the Sergeant
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27 ¹Exhibit B to the complaint is a sworn affidavit by Plaintiff.
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1 opposition (dkt. 41), and Defendants filed a reply brief (dkt. 45). Plaintiff then filed a
2 “supplemental” response to Defendant’s reply brief (dkt. 47), and thereafter Defendants
3 filed a further reply to Plaintiff supplemental response (dkt. 51). Plaintiff then filed a
4 “reply” (dkt. 54) to Defendants’ last filing. Although these filings were not authorized in
5 the scheduling orders, the Court has considered all of them. Plaintiff’s motion for an
6 extension of time in which to file this latest “reply” brief is GRANTED.

7 **B. Summary Judgment Standard of Review**

8 Summary judgment is proper when the pleadings, discovery, and affidavits show
9 that there is “no genuine dispute as to any material fact and [that] the moving party is
10 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A material fact is one
11 that may affect the outcome of the lawsuit, and a genuine dispute about a material fact is
12 one “such that a reasonable jury could return a verdict for the nonmoving party.”

13 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

14 The moving party bears the initial burden of identifying those portions of the
15 record which demonstrate the absence of a genuine issue of material fact. If the moving
16 party satisfies that burden, then the nonmoving party must “go beyond the pleadings, and
17 by his own affidavits, or by the depositions, answers to interrogatories, or admissions on
18 file, designate specific facts showing that there is a genuine issue for trial.” *Celotex*
19 *Corp. v. Catrett*, 477 U.S. 317, 324 (1986) (quotations omitted).

20 A court will grant summary judgment “against a party who fails to make a
21 showing sufficient to establish the existence of an element essential to that party’s case,
22 and on which that party will bear the burden of proof at trial . . . since a complete failure
23 of proof concerning an essential element of the nonmoving party’s case necessarily
24 renders all other facts immaterial.” *Id.* at 322–23.

25 The court’s function on motion for summary judgment is not to make credibility
26 determinations or to weigh conflicting evidence. *T.W. Elec. Serv. v. Pacific Elec.*

1 *Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987). Rather, the court’s function is to
2 view the evidence and any inferences it draws from the evidence in the light most
3 favorable to the nonmoving party. *Id.* at 631. However, it is the nonmoving party’s duty
4 to identify with “reasonable particularity” the evidence that precludes summary
5 judgment. *Keenan v. Allen*, 91 F.3d 1275, 1279 (9th Cir. 1996).

6 Where, as here, the Plaintiff is proceeding pro se, the Court considers as evidence
7 in opposition to summary judgment all of Plaintiff’s contentions offered in his motions
8 and pleadings, where such contentions are based on personal knowledge and set forth
9 facts that would be admissible in evidence, and where Plaintiff attested under penalty of
10 perjury that the contents of the motions or pleadings are true and correct. *Jones v.*
11 *Blanas*, 393 F.3d 918, 923 (9th Cir. 2004). In this case, Plaintiff properly attested to the
12 contents of the complaint and to his supplemental opposition brief (dkt. 47), but not to
13 the contents of his opposition to the motion for summary judgment (dkt. 41) or his last
14 “reply” brief (dkt. 54). Thus, factual statements in the complaint and supplemental
15 opposition brief, as well as in Plaintiff’s affidavit and the declarations he has submitted,
16 have been considered as opposing evidence to the extent they are based on personal
17 knowledge and would be admissible in evidence.

18 **C. Summary Judgment**

19 1. Substantive Due Process

20 Plaintiff claims that the conditions of his confinement at the jail were sufficiently
21 poor that they violated his substantive right to due process. The substantive right to due
22 process entitles a civil detainee awaiting adjudication of his commitment proceedings,
23 like Plaintiff, to conditions of confinement that are not punitive. *Jones v. Blanas*, 393
24 F.3d 918, 932 (9th Cir. 2004). A restriction is punitive where it is intended to punish, or
25 where it is excessive in relation to its non-punitive purpose, or is employed to achieve
26 objectives that could be accomplished in so many alternative and less harsh methods. *Id.*
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1 at 933-34 (citations omitted). Legitimate, non-punitive government interests include
2 ensuring a detainee's presence at trial, maintaining jail security, and effective
3 management of a detention facility. *Id.* at 932. With respect to an individual confined
4 awaiting adjudication under civil process, a presumption of punitive conditions arises
5 where the individual is detained under conditions identical to, similar to, or more
6 restrictive than those under which pretrial criminal detainees are held, or where the
7 individual is detained under conditions more restrictive than those he or she would face
8 upon commitment. *Id.* at 934. To be sure, the government must be afforded an
9 opportunity to rebut this presumption. *See id.* at 934-35.

10 In *Jones*, the Plaintiff was an SVP housed in Sacramento County Jail for over two
11 years, including one year with the general prison population and one year in
12 administrative segregation. *Id.* at 924. Throughout, he was subject to numerous strip
13 searches; at least three times he was taken outside at gunpoint and forced to take off his
14 clothes in front several deputies (including female deputies), to lift his penis and
15 testicles, to run his fingers through his hair and mouth, and to bend over, spread his
16 buttocks and cough three times. *Id.* In addition, after being housed with the general
17 criminal population, his conditions in segregation became "far worse" than they had
18 been previously. *Id.* These conditions were found to be presumptively punitive, and the
19 case was remanded to allow the government to attempt to rebut the presumption. *Id.*

20 By contrast, the conditions Plaintiff experienced at the jail during the relevant
21 time period, even when the evidence is viewed in a light most favorable to him, were a
22 far cry from the conditions that *Jones* found punitive. Whereas the Plaintiff in *Jones*
23 spent two years in county jail and one year housed with the general criminal population,
24 Plaintiff spent three weeks in the county jail and only 24 hours with inmates awaiting
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1 criminal process.³ Even then, there was only one such inmate and briefly a second, and
2 there is no evidence that they harmed or threatened Plaintiff. There is also no evidence of
3 the kind of repeated and humiliating searches in front of female employees that occurred
4 in *Jones*. Although the cell he was initially put into was very dirty, when he told jail
5 officials about it, he was allowed to wait outside the cell while it was cleaned. Also,
6 when Plaintiff explained his SVP status to prison officials, they put him in his own cell
7 in administrative segregation, separated from the general population that same day, and
8 he remained there for the rest of his time at the jail. Even if Plaintiff was cold and did
9 not receive a blanket during his first 24 hours at the jail, this does not rise even close to
10 the level of the conditions the Plaintiff in *Jones* faced that were found to indicate
11 punishment.

12 As noted, Defendants have presented evidence that Plaintiff was placed in
13 administrative segregation for purposes of protection, not punishment. The conditions
14 that Plaintiff complains about do not suggest otherwise. As noted, he was not housed
15 with inmates facing criminal process. The medical records show that Plaintiff was given
16 medications, including a statin and Naprosyn after 11 days there, and a high sodium diet,
17 which are medically appropriate to a person with high blood pressure and other
18 conditions. (Harness Decl. ¶¶ 4-6; Defs. Exs. 8-9.) While Plaintiff disputes these
19 records insofar as he complains that he did not receive any medication for his first 11
20 days, and complains about the low sodium diet, Plaintiff has presented no evidence that
21 such a delay was the result of an intent to punish as opposed to mere negligence, or that
22 his medical needs were sufficiently urgent that he suffered any harm from the delay.
23 Defendants have presented evidence that the conditions he faced in segregation were not
24 similar to those found presumptively punitive in *Jones* insofar as he had daily access to day

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26 ³Plaintiff states in his opposition that he was “stripped searched [sic]”. (Opp. at 9.) In
27 support of this statement, he cites to page four of his affidavit, but there is no such statement to
28 this effect. (Compl. Ex. B at 4.)

1 facilities and an exercise yard, and the same access to the library as general population inmates
2 (i.e. via a slip system). (Bass Decl. ¶ 18, 20; Defs. Ex. 7.) Plaintiff's other complaints about
3 the time he was given his own cell, such as that he had to clean the electric razor before
4 using it and lacked education and self-help programs for three weeks are clearly too
5 minor to rise to the level present in *Jones* suggesting punishment.

6 Defendants assert that they initially placed him with inmates facing criminal
7 process because the discharge papers sent to jail officials from Coalinga did not indicate
8 that he was a civil detainee, an SVP, or that he was undergoing civil commitment
9 proceedings, and Plaintiff also did not tell jail officials this when he first arrived. (Bass
10 Decl. ¶¶ 8-9; Defs. Exs. 4, 10; Compl. Ex. B at 4-5.) Plaintiff spends considerable time
11 arguing that they knew or should have known his SVP status from the color of his
12 clothing and various documents, which of course Defendants dispute. This dispute is not
13 material, however, because for the reasons discussed above his initial placement with
14 criminal inmates, whether Defendants knew or should have known of his SVP status,
15 was too brief and under conditions neither bad or dangerous enough to reasonably be
16 found to amount to punishment.

17 Overall, the evidence about the conditions of Plaintiff's three-week stay at the
18 jail, even when viewed in a light most favorable to Plaintiff, does not allow a reasonable
19 inference of punishment. As a result, there is no genuine issue of material fact as to
20 whether or not his substantive right to due process was violated.

21 2. Access to the Courts

22 Plaintiff claims that the failure to provide him his legal papers when he requested
23 them on November 27, 2007, for his commitment proceedings the next day violated his
24 right to access the courts. To establish a claim for a violation of the right of access to the
25 courts, the plaintiff must prove that the jail officials' actions hindered his efforts to
26 pursue a non-frivolous claim concerning his conviction or conditions of confinement.

1 *Lewis v. Casey*, 518 U.S. 343, 350-55 (1996). To begin with, Plaintiff was represented
2 by an attorney at his proceedings who provided him representation and access to the
3 courts. There is also no evidence that jail officials had his legal papers; Plaintiff's
4 declaration only states that a jail official agreed to look for them but never produced
5 them. In any case, there is no evidence that he was harmed by his lack of access to the
6 papers. The asserted harm is that he would have succeeded at the proceedings if he had
7 his legal papers, but he makes no showing to that effect. His only specific allegation is
8 that he would have been able to produce a hearsay statement from the prosecutor in a
9 different case that a two-year commitment cannot be retroactively converted to an
10 indefinite commitment. He has made no showing as to why he could not present such an
11 argument even without his papers, if not at the proceedings then later on appeal. Nor has
12 he shown that such a statement by the prosecutor is a correct assessment of the law or is
13 binding on his commitment proceedings; the state courts' commitment decision and
14 rejections of his appeals suggest that it was not. As a result, Plaintiff has not shown that
15 his lack of legal papers prevented him from pursuing a non-frivolous claim in his
16 commitment proceedings so as to violate his right to access the courts.

17 3. Remaining Claims

18 Plaintiff's claim under the Equal Protection Clause fails because his allegations
19 are not that he was treated differently from "similarly situated" people, *see City of*
20 *Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985), but rather that he should
21 not have been treated similarly to people with a different status – namely those facing
22 criminal process.

23 His claim that his procedural right to due process was violated also fails because
24 he has not identified any clearly established state created liberty interest that triggers
25 procedural due process protections. *See Hydrick v. Hunter*, 500 F.3d 978, 995 (9th Cir.
26 2007), *rev'd on other grounds*, 129 S. Ct. 2431 (2009), *op. after remand, Hydrick v.*

1 *Hunter*, 669 F.3d 937 (9th Cir. 2012).

2 Also, the civil nature of the SVPA means that his claims under the Double
3 Jeopardy and Ex Post Facto Clauses are foreclosed. *See id.* at 993 (discussing *Seling v.*
4 *Young*, 531 U.S. 250 (2001), in which the Supreme Court rejected such challenges to a
5 similar statute, and *Hubbart v. Superior Court*, 19 Cal. 4th 1138 (1999), in which the
6 California Supreme Court rejected such challenges to the SVPA).

7 His claims under the Eighth Amendment also fail because SVPs are detained for
8 the purpose of treatment, and the state's power to punish them expires at the end of their
9 criminal sentence. *Id.* at 994. Substantive due process, discussed above, is the proper
10 vehicle for them to challenge the conditions of their civil confinement, not the Eighth
11 Amendment. *Id.*

12 **D. Plaintiff's Motion for Default and Sanctions**

13 Plaintiff has filed a motion for default judgment or sanctions. (Dkt. 49.) The
14 motion is based upon complaints about Defendant's response to discovery, as well as
15 other aspects of Defendant's actions in this case. These complaints are also raised in
16 Plaintiff's supplemental opposition to summary judgment. (Dkt. 47.)

17 Plaintiff complains that Defendants failed to provide a sufficient response to his
18 request for his medical records maintained at the jail by jail employees. Defendants
19 provided Plaintiff with the jail's records of the health screening during intake when
20 Plaintiff arrived at the jail. (Dkt. 51 at 2). Plaintiff complains that Defendants did not
21 also supply the medical records that Defendants filed as exhibits in support of his reply
22 brief. Those medical records were not maintained by the jail, however, but by the
23 California Medical Forensic Group ("CFMG"), who is contracted by the jail to provide
24 medical care. (*Id.*) Defendants had directed Plaintiff to contact CFMG to obtain such
25 records. (*Id.*) In any event, Plaintiff received these records in conjunction with
26 Defendants' reply brief (dkt. 45), and the Court has considered his supplemental
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1 oppositions in which he responded to such exhibits (dkt. 47, 54). Admittedly,
2 Defendants should have filed the exhibits, as well as the declarations of Harness and
3 Bass with their motion, not their reply brief, but as the Court has considered Plaintiff's
4 two lengthy briefs that responding to the reply, exhibits, and declarations (dkt. 47, 54),
5 Plaintiff has not been prejudiced and the Court finds no cause for granting default or for
6 sanctions.

7 Plaintiff also complains that Defendants did not provide a sufficient response to
8 his request for documents that "identif[y] and list all criteria of information stored in the
9 Jail Information Management System utilized at the [Jail] at all times relevant to this
10 operative complaint." (Dkt. 47 at 3.) Defendants indicate that the jail did not have a
11 "Jail Information Management System." (Dkt. 51 at 5.) Nevertheless, the Defendants
12 provided Plaintiff eight pages of printouts from its database about Plaintiff's booking
13 and processing at the jail. (*Id.*) The Court finds this request difficult to understand, and
14 to the extent it is intelligible it is far too vague and overbroad insofar as it appears to
15 seek "all" information about all inmates at the jail, not just Plaintiff, including during
16 time periods that are no longer a part of this case.

17 Plaintiff also asserts that Defendants made has made a number of
18 "misrepresentations." These alleged misrepresentations consist of errors as well as
19 arguments disputed by Plaintiff. The papers of both parties have errors, and frequently
20 show confusion about legal and factual issues. While this is perhaps more
21 understandable on the part of a pro se Plaintiff than a lawyer, the Court has found
22 nothing that evinces deliberate misrepresentations or other sanctionable conduct on the
23 part of Defendants or their counsel.

24 Accordingly, Plaintiff's motion for default judgment or other sanctions is
25 DENIED.

26 //


1 **CONCLUSION**

2 For the foregoing reasons, Defendant’s motion for summary judgment (dkt. 35) is
3 GRANTED. Plaintiff’s motion for default judgment (dkt. 49) is DENIED. Defendant’s
4 motion for an extension of time (dkt. 50) is DENIED as unnecessary because there was
5 no deadline to extend. Plaintiff’s motion for an extension of time (dkt. 55) is GRANTED.
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7 The Clerk shall enter judgment and close the file.

8 IT IS SO ORDERED.

9 DATED: July 25, 2013

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12 JEFFREY S. WHITE
13 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
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5 JORGE L. RUBIO,

6 Plaintiff,

7 v.

8 MIKE KANALAKIS et al,

9 Defendant.
10 _____/

Case Number: CV10-01963 JSW


CERTIFICATE OF SERVICE

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on July 25, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
16 receptacle located in the Clerk's office.

17 Jorge L. Rubio
18 CO-000413-5 Unit T19
19 P.O. Box 5003
20 Coalinga, CA 93210

21 Dated: July 25, 2013


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk