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I

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." Id. § 1915A(b). Pleadings filed by pro se litigants, however, must be liberally construed. Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010); Balistreri v. Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir. 1990).

II

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

Deliberate indifference to serious medical needs violates the Eighth Amendment's proscription against cruel and unusual punishment.¹ Estelle v. Gamble, 429 U.S. 97, 104 (1976). A determination of "deliberate indifference" to a prisoner's serious

¹ At the time he initiated this action, Plaintiff was awaiting trial in the San Francisco County Jail. As a pretrial detainee, his medical claim arises under the Due Process Clause, but the Eighth Amendment still serves as a benchmark for evaluating the claim. See Carnell v. Grimm, 74 F.3d 977, 979 (9th Cir. 1996) (Eighth Amendment guarantees provide minimum standard of care for pretrial detainees).

1 medical needs involves an examination of two elements: the
2 seriousness of the prisoner's medical need and the nature of the
3 defendant's response to that need. See McGuckin v. Smith, 974 F.2d
4 1050, 1059 (9th Cir. 1992).

5 A "serious medical need" exists if the failure to treat a
6 prisoner's condition could result in further significant injury or
7 the "unnecessary and wanton infliction of pain." McGuckin, 974 F.2d
8 at 1059 (citing Estelle, 429 U.S. at 104), overruled in part on
9 other grounds by WMX Technologies, Inc. v. Miller, 104 F.3d 1133,
10 1136 (9th Cir. 1997) (en banc). A prison official is "deliberately
11 indifferent" if he knows that a prisoner faces a substantial risk of
12 serious harm and disregards that risk by failing to take reasonable
13 steps to abate it. Farmer v. Brennan, 511 U.S. 825, 837 (1994).

14 A pretrial detainee establishes a violation of the right
15 to personal security protected by the Due Process Clause of the
16 Fourteenth Amendment by demonstrating that prison officials acted
17 with deliberate indifference. Redman v. County of San Diego, 942
18 F.2d 1435, 1443 (9th Cir. 1991) (en banc). A prison official acts
19 with deliberate indifference only if he knows of and disregards an
20 excessive risk to prisoner health or safety. Farmer, 511 U.S. at
21 837. The official must both be aware of facts from which the
22 inference could be drawn that a substantial risk of serious harm
23 exists, and he also must draw the inference. Id. Negligence is not
24 sufficient to impose liability under 42 U.S.C. § 1983. Id. at 835;
25 Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998). Rather, the
26 official's conduct must have been "wanton," which turns not upon its
27 effect on the prisoner, but rather, upon the constraints facing the
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1 official. Id. (citing Wilson v. Seiter, 501 U.S. 294, 302-03
2 (1991)).

3 Liberally construed, Plaintiff's allegations that medical
4 staffer Romelo Adeo was deliberately indifferent to Plaintiff's
5 serious medical needs appear to state a cognizable 42 U.S.C. § 1983
6 claim and Adeo will be served.

7 Named Defendant "City and County Department of Public
8 Health Jail Services" is hereby DISMISSED without prejudice due to
9 Plaintiff's failure to allege sufficient facts to show that some
10 official policy or custom caused a constitutional tort, see Monell
11 v. Dep't. of Social Servs., 436 U.S. 658, 690 (1978); see also Board
12 of Cty. Comm'rs. of Bryan Cty. v. Brown, 520 U.S. 397, 403 (1997);
13 Monell, 436 U.S. at 691; Fuller v. City of Oakland, 47 F.3d 1522,
14 1534 (9th Cir. 1995) (city or county may not be held vicariously
15 liable for the unconstitutional acts of its employees under the
16 theory of respondeat superior); Plumeau v. School Dist. #40 County
17 of Yamhill, 130 F.3d 432, 438 (9th Cir. 1997) (to impose municipal
18 liability under 42 U.S.C. § 1983 for a violation of constitutional
19 rights, plaintiff must show: (1) that plaintiff possessed a
20 constitutional right of which he or she was deprived; (2) that the
21 municipality had a policy; (3) that this policy amounts to
22 deliberate indifference to the plaintiff's constitutional rights;
23 and (4) that the policy is the moving force behind the
24 constitutional violation).

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1 III

2 For the foregoing reasons and for good cause shown:

3 1. The Clerk shall issue summons and the United States
4 Marshal shall serve, without prepayment of fees, copies of the
5 Complaint in this matter, all attachments thereto, and copies of
6 this Order on San Francisco County Jail (850 Bryant Street, San
7 Francisco) Medical Staffer Romelo Adeo. The Clerk also shall serve
8 a copy of this Order on Plaintiff.

9 2. To expedite the resolution of this case, the Court
10 orders as follows:

11 a. No later than ninety (90) days from the date of
12 this Order, Defendants shall file a motion for summary judgment or
13 other dispositive motion. A motion for summary judgment shall be
14 supported by adequate factual documentation and shall conform in all
15 respects to Federal Rule of Civil Procedure 56, and shall include as
16 exhibits all records and incident reports stemming from the events
17 at issue. If Defendants are of the opinion that this case cannot be
18 resolved by summary judgment or other dispositive motion, they shall
19 so inform the Court prior to the date their motion is due. All
20 papers filed with the Court shall be served promptly on Plaintiff.

21 b. Plaintiff's opposition to the dispositive motion
22 shall be filed with the Court and served upon Defendants no later
23 than thirty (30) days after Defendants serve Plaintiff with the
24 motion.

25 c. Plaintiff is advised that a motion for summary
26 judgment under Rule 56 of the Federal Rules of Civil Procedure will,
27 if granted, end your case. Rule 56 tells you what you must do in
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1 order to oppose a motion for summary judgment. Generally, summary
2 judgment must be granted when there is no genuine issue of material
3 fact - that is, if there is no real dispute about any fact that
4 would affect the result of your case, the party who asked for
5 summary judgment is entitled to judgment as a matter of law, which
6 will end your case. When a party you are suing makes a motion for
7 summary judgment that is properly supported by declarations (or
8 other sworn testimony), you cannot simply rely on what your
9 complaint says. Instead, you must set out specific facts in
10 declarations, depositions, answers to interrogatories, or
11 authenticated documents, as provided in Rule 56(e), that contradicts
12 the facts shown in the Defendants' declarations and documents and
13 show that there is a genuine issue of material fact for trial. If
14 you do not submit your own evidence in opposition, summary judgment,
15 if appropriate, may be entered against you. If summary judgment is
16 granted, your case will be dismissed and there will be no trial.
17 Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc)
18 (App. A).

19 Plaintiff also is advised that a motion to dismiss for
20 failure to exhaust administrative remedies under 42 U.S.C. §
21 1997e(a) will, if granted, end your case, albeit without prejudice.
22 You must "develop a record" and present it in your opposition in
23 order to dispute any "factual record" presented by the Defendants in
24 their motion to dismiss. Wyatt v. Terhune, 315 F.3d 1108, 1120 n.14
25 (9th Cir. 2003).

26 d. Defendants shall file a reply brief within
27 fifteen (15) days of the date on which Plaintiff serves them with
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1 the opposition.

2 e. The motion shall be deemed submitted as of the
3 date the reply brief is due. No hearing will be held on the motion
4 unless the Court so orders at a later date.

5 3. Discovery may be taken in accordance with the Federal
6 Rules of Civil Procedure. No further Court order is required before
7 the parties may conduct discovery.

8 4. All communications by Plaintiff with the Court must
9 be served on Defendants, or Defendants' counsel once counsel has
10 been designated, by mailing a true copy of the document to
11 Defendants or Defendants' counsel.

12 5. It is Plaintiff's responsibility to prosecute this
13 case. Plaintiff must keep the Court and all parties informed of any
14 change of address and must comply with the Court's orders in a
15 timely fashion. Failure to do so may result in the dismissal of
16 this action pursuant to Federal Rule of Civil Procedure 41(b).

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18 IT IS SO ORDERED.

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20 DATED 10/05/2011



THELTON E. HENDERSON
United States District Judge

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