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5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
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8 JAMES ERNEST ROJO,
9 Plaintiff,

No. C 12-2518 SI (pr)

ORDER OF SERVICE

10 v.

11 DARRIN BRIGHT; et al.,
12 Defendants.
13 _____/

14 **INTRODUCTION**

15 James Ernest Rojo, an inmate at the Correctional Training Facility in Soledad ("CTF-
16 Soledad"), filed this *pro se* civil rights action under 42 U.S.C. § 1983. The court dismissed the
17 complaint with leave to amend. Rojo then filed an amended complaint, which is now before the
18 court for review under 28 U.S.C. § 1915A.
19

20 **BACKGROUND**

21 Rojo complains about prison medical staff's response to his medical needs at CTF-
22 Soledad. He alleges in his amended complaint that he was issued a walker based on his recent
23 back surgery and neuropathy in his limbs. Dr. Bright allegedly "took away the walker without
24 proper examination," which caused Rojo's condition to deteriorate. Docket #9, p. 3. Dr. Bright
25 and Dr. Kalisher allegedly failed to provide adequate pain medication for Rojo. Warden
26 Grounds allegedly allowed the walker to be taken away from Rojo.
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DISCUSSION

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2 A federal court must engage in a preliminary screening of any case in which a prisoner
3 seeks redress from a governmental entity or officer or employee of a governmental entity. *See*
4 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss
5 any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted,
6 or seek monetary relief from a defendant who is immune from such relief. *See id.* at § 1915A(b).
7 *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d
8 696, 699 (9th Cir. 1990).

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

13 Deliberate indifference to a prisoner's serious medical needs violates the Eighth
14 Amendment's proscription against cruel and unusual punishment. *See Estelle v. Gamble*, 429
15 U.S. 97, 102-04 (1976). To prove that the response of prison officials to a prisoner's medical
16 needs was constitutionally deficient, the prisoner must establish (1) a serious medical need and
17 (2) deliberate indifference to that need by prison officials. *See McGuckin v. Smith*, 974 F.2d
18 1050, 1059-60 (9th Cir. 1992), *overruled on other grounds*, *WMX Technologies, Inc. v. Miller*,
19 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc).

20 Liberally construed, the *pro se* amended complaint states a cognizable claim for
21 violations of Rojo's Eighth Amendment rights based on his allegations that Dr. Bright deprived
22 him of a needed walker and that Drs. Bright and Kalisher deprived him of needed pain
23 medications.

24 The amended complaint does not state a claim against the warden. The amended
25 complaint does not allege that the warden was involved in the medical care, and appears to base
26 liability on the fact that he was in charge of the institution at which the alleged deliberate
27 indifference to medical needs occurred. There is no respondeat superior liability under § 1983,
28 i.e. no liability under the theory that one is responsible for the actions or omissions of an

1 employee. *See Board of Cty. Comm'rs. of Bryan Cty. v. Brown*, 520 U.S. 397, 403 (1997).

2
3 **CONCLUSION**

4 1. The amended complaint, liberally construed, states a cognizable § 1983 claim
5 against Dr. Darrin Bright and Dr. Kalisher for Eighth Amendment violations. All other
6 defendants and claims are dismissed.

7 2. The clerk shall issue a summons and the United States Marshal shall serve, without
8 prepayment of fees, the summons, a copy of the amended complaint and a copy of all the
9 documents in the case file upon Dr. Darrin Bright and Dr. Kalisher, both of whom apparently
10 work on the medical staff at CTF-Soledad.

11 3. In order to expedite the resolution of this case, the following briefing schedule for
12 dispositive motions is set:

13 a. No later than **December 7, 2012**, defendants must file and serve a motion
14 for summary judgment or other dispositive motion. If defendants are of the opinion that this case
15 cannot be resolved by summary judgment, defendants must so inform the court prior to the date
16 the motion is due. Defendants must provide to plaintiff a new *Rand* notice regarding summary
17 judgment at the time they file a motion for summary judgment. *See Woods v. Carey*, 684 F.3d
18 934, 940-41 (9th Cir. 2012).

19 b. Plaintiff's opposition to the summary judgment or other dispositive motion
20 must be filed with the court and served upon defendant no later than **January 11, 2013**. Plaintiff
21 must bear in mind the following notice and warning regarding summary judgment as he prepares
22 his opposition to any summary judgment motion:

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24 The defendants may make a motion for summary judgment by which they seek to have
25 your case dismissed. A motion for summary judgment under Rule 56 of the Federal
26 Rules of Civil Procedure will, if granted, end your case. . . . Rule 56 tells you what you
27 must do in order to oppose a motion for summary judgment. Generally, summary
28 judgment must be granted when there is no genuine issue of material fact -- that is, if
there is no real dispute about any fact that would affect the result of your case, the party
who asked for summary judgment is entitled to judgment as a matter of law, which will
end your case. When a party you are suing makes a motion for summary judgment that
is properly supported by declarations (or other sworn testimony), you cannot simply rely
on what your complaint says. Instead, you must set out specific facts in declarations,

1 depositions, answers to interrogatories, or authenticated documents, as provided in Rule
2 56(e), that contradict the facts shown in the defendants' declarations and documents and
3 show that there is a genuine issue of material fact for trial. If you do not submit your own
4 evidence in opposition, summary judgment, if appropriate, may be entered against you.
5 If summary judgment is granted, your case will be dismissed and there will be no trial.
6 (*See Rand v. Rowland*, 154 F.3d 952, 962-63 (9th Cir. 1998).)

7 Plaintiff also should take note that a defendant may file a motion to dismiss for failure to exhaust
8 administrative remedies instead of, or in addition to, a motion for summary judgment. A motion
9 to dismiss for failure to exhaust administrative remedies under 42 U.S.C. § 1997e(a) will, if
10 granted, result in the termination of the action. The plaintiff must “develop a record” and present
11 it in his opposition to dispute any “factual record” presented by a defendant’s motion to dismiss.
12 *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003).

13 c. If defendants wish to file a reply brief, the reply brief must be filed and
14 served no later than **January 25, 2013**.

15 4. All communications by plaintiff with the court must be served on a defendant's
16 counsel by mailing a true copy of the document to defendant's counsel. The court may disregard
17 any document which a party files but fails to send a copy of to his opponent. Until a defendant's
18 counsel has been designated, plaintiff may mail a true copy of the document directly to
19 defendant, but once a defendant is represented by counsel, all documents must be mailed to
20 counsel rather than directly to that defendant.

21 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
22 No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16 is
23 required before the parties may conduct discovery.

24 6. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the
25 court informed of any change of address and must comply with the court's orders in a timely
26 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
27 pursuant to Federal Rule of Civil Procedure 41(b).

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7. Plaintiff is cautioned that he must include the case name and case number for this case on any document he submits to this court for consideration in this case.

IT IS SO ORDERED.

Dated: September 13, 2012



SUSAN ILLSTON
United States District Judge