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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 GEORGE MARTIN, H-90626,)
9 Plaintiff(s),) No. C 12-3193 CRB (PR)
10 v.) ORDER OF SERVICE
11 RANDY GROUNDS, Warden, et al.,)
12 Defendant(s).)
13

14 Plaintiff, a prisoner at Salinas Valley State Prison (SVSP), has filed a pro
15 se First Amended Complaint for damages under 42 U.S.C. § 1983 alleging
16 inadequate medical care while at SVSP. Among other things, plaintiff alleges
17 that SVSP medical staff have deprived him of treatment for a host of serious
18 medical conditions, medically necessary cell feeding and effective pain
19 management. He claims that there actions and omissions amount to deliberate
20 indifference under § 1983 and medical negligence under California law.

21 **DISCUSSION**

22 A. Standard of Review

23 Federal courts must engage in a preliminary screening of cases in which
24 prisoners seek redress from a governmental entity or officer or employee of a
25 governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable
26 claims or dismiss the complaint, or any portion of the complaint, if the complaint
27 "is frivolous, malicious, or fails to state a claim upon which relief may be
28 granted," or "seeks monetary relief from a defendant who is immune from such

1 relief." Id. § 1915A(b). Pro se pleadings must be liberally construed, however.
2 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

3 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
4 essential elements: (1) that a right secured by the Constitution or laws of the
5 United States was violated, and (2) that the alleged violation was committed by a
6 person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48
7 (1988).

8 B. Legal Claims

9 Deliberate indifference to serious medical needs violates the Eighth
10 Amendment's proscription against cruel and unusual punishment. Estelle v.
11 Gamble, 429 U.S. 97, 104 (1976). A "serious medical need" exists if the failure
12 to treat a prisoner's condition could result in further significant injury or the
13 "unnecessary and wanton infliction of pain." McGuckin v. Smith, 974 F.2d 1050,
14 1059 (9th Cir. 1992) (citing Estelle, 429 U.S. at 104), overruled in part on other
15 grounds by WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir.
16 1997) (en banc). A prison official is "deliberately indifferent" if he knows that a
17 prisoner faces a substantial risk of serious harm and disregards that risk by failing
18 to take reasonable steps to abate it. Farmer v. Brennan, 511 U.S. 825, 837
19 (1994).

20 Liberally construed, plaintiff's allegations that SVSP medical staff have
21 deprived him of treatment for a host of serious medical conditions, medically
22 necessary cell feeding, effective pain management and the like, appear to state a
23 cognizable § 1983 claim for deliberate indifference to serious medical needs
24 against the following SVSP defendants: Doctors Michael C. Sepulveda, Richard
25 B. Mack, Kim Kumar, Darren Bright and Sammit Reed, and Nurse Eric Golden.
26 They also appear to state a cognizable California state law claim for medical
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1 negligence against the same defendants pursuant to this court's supplemental
2 jurisdiction under 28 U.S.C. § 1367. These SVSP defendants accordingly will be
3 ordered served.

4 But SVSP Warden Randy Grounds is dismissed because he is named on
5 the theory that he is liable for the actions of his subordinates and it is well
6 established that there is no § 1983 liability under such a theory, i.e., a theory of
7 respondeat superior liability. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.
8 1989) (under no circumstances is there liability under § 1983 solely because one
9 is responsible for the actions or omissions of another).

10 And Dr. N. Bhatt, who plaintiff alleges was deliberately indifferent to his
11 serious medical needs while plaintiff was incarcerated at California Substance
12 Abuse Treatment Facility in Corcoran (SATF), is dismissed without prejudice to
13 plaintiff bringing his allegations against Dr. Bhatt in the Eastern District of
14 California, where Dr. Bhatt resides and where the events and/or omissions giving
15 rise to plaintiff's claim against Dr. Bhatt occurred. See 28 U.S.C. § 1391(b).

16 CONCLUSION

17 For the foregoing reasons and for good cause shown,

18 1. The clerk shall issue summons and the United States Marshal shall
19 serve, without prepayment of fees, copies of the First Amended Complaint in this
20 matter, all attachments thereto, and copies of this order on the following
21 defendants at SVSP: Doctors Michael C. Sepulveda, Richard B. Mack, Kim
22 Kumar, Darren Bright and Sammit Reed, and Nurse Eric Golden. The clerk also
23 shall serve a copy of this order on plaintiff.

24 2. In order to expedite the resolution of this case, the court orders as
25 follows:

26 a. No later than 90 days from the date of this order, defendants
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1 shall serve and file a motion for summary judgment or other dispositive motion.
2 A motion for summary judgment must be supported by adequate factual
3 documentation and must conform in all respects to Federal Rule of Civil
4 Procedure 56, and must include as exhibits all records and incident reports
5 stemming from the events at issue. A motion for summary judgment also must
6 be accompanied by a Rand notice so that plaintiff will have fair, timely and
7 adequate notice of what is required of him in order to oppose the motion. Woods
8 v. Carey, 684 F.3d 934, 935 (9th Cir. 2012) (notice requirement set out in Rand
9 v. Rowland, 154 F.3d 952 (9th Cir. 1998), must be served concurrently with
10 motion for summary judgment). A motion to dismiss for failure to exhaust
11 available administrative remedies must be accompanied by a similar notice.
12 Stratton v. Buck, 697 F.3d 1004, 1008 (9th Cir. 2012); Woods, 684 F.3d at 935
13 (notice requirement set out in Wyatt v. Terhune, 315 F.3d 1108 (9th Cir. 2003),
14 must be served concurrently with motion to dismiss for failure to exhaust
15 available administrative remedies).

16 If defendants are of the opinion that this case cannot be resolved by
17 summary judgment or other dispositive motion, they shall so inform the court
18 prior to the date their motion is due. All papers filed with the court shall be
19 served promptly on plaintiff.

20 b. Plaintiff must serve and file an opposition or statement of
21 non-opposition to the dispositive motion not more than 28 days after the motion
22 is served and filed.

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

14 Plaintiff also is advised that a motion to dismiss for failure to exhaust
15 available administrative remedies under 42 U.S.C. § 1997e(a) will, if granted,
16 end your case, albeit without prejudice. You must "develop a record" and present
17 it in your opposition in order to dispute any "factual record" presented by the
18 defendants in their motion to dismiss. Wyatt v. Terhune, 315 F.3d 1108, 1120
19 n.14 (9th Cir. 2003). You have the right to present any evidence to show that you
20 did exhaust your available administrative remedies before coming to federal
21 court. Such evidence may include: (1) declarations, which are statements signed
22 under penalty of perjury by you or others who have personal knowledge of
23 relevant matters; (2) authenticated documents – documents accompanied by a
24 declaration showing where they came from and why they are authentic, or other
25 sworn papers such as answers to interrogatories or depositions; (3) statements in
26 your complaint insofar as they were made under penalty of perjury and they show
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1 that you have personal knowledge of the matters state therein. In considering a
2 motion to dismiss for failure to exhaust, the court can decide disputed issues of
3 fact with regard to this portion of the case. Stratton, 697 F.3d at 1008-09.

4 (The Rand and Wyatt/Stratton notices above do not excuse defendants'
5 obligation to serve said notices again concurrently with motions to dismiss for
6 failure to exhaust available administrative remedies and motions for summary
7 judgment. Woods, 684 F.3d at 935.)

8 d. Defendants must serve and file a reply to an opposition not
9 more than 14 days after the opposition is served and filed.

10 e. The motion shall be deemed submitted as of the date the
11 reply is due. No hearing will be held on the motion unless the court so orders at a
12 later date.

13 3. Discovery may be taken in accordance with the Federal Rules of
14 Civil Procedure. No further court order under Federal Rule of Civil Procedure
15 30(a)(2) or Local Rule 16 is required before the parties may conduct discovery.

16 4. All communications by plaintiff with the court must be served on
17 defendants, or defendants' counsel once counsel has been designated, by mailing
18 a true copy of the document to defendants or defendants' counsel.

19 5. It is plaintiff's responsibility to prosecute this case. Plaintiff must
20 keep the court and all parties informed of any change of address and must comply
21 with the court's orders in a timely fashion. Failure to do so may result in the
22 dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b).

23 SO ORDERED.

24 DATED: June 12, 2013

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27 CHARLES R. BREYER
28 United States District Judge