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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DARRELL EDWARD BUCKINS,
Plaintiff,
v.
BRENDA MCCOY, et al.,
Defendants.

Case No. [16-cv-06157-SI](#)

ORDER OF SERVICE

Re: Dkt. No. 11

Darrell Edward Buckins, Jr., formerly an inmate at the Glenn Dyer Jail in Alameda County and now an inmate at the San Francisco County Jail, filed a *pro se* civil rights action under 42 U.S.C. § 1983 complaining of conditions of confinement at the Glenn Dyer Jail. The court reviewed his complaint and dismissed it with leave to amend. His amended complaint is now before the court for review under 28 U.S.C. § 1915A.

BACKGROUND

Buckins alleges the following in his amended complaint about responses to his medical needs at Glenn Dyer Jail during the period December 2014 through August 2015:

In December 2014, Buckins submitted a medical request form complaining of pain in his abdominal area and “constant urination problems.” Docket No. 11 at 5. He eventually was seen by Dr. Brenda McCoy, a staff member at Corizon Health Services, Inc., the medical care provider for the jail. Lab tests were ordered.

After not hearing the results of the lab tests and still being in pain, Buckins submitted another medical request form on January 28, 2015. Dr. McCoy and Debra Walker, a licensed

1 vocational nurse (LVN), explained to Buckins that the lab tests were “negative to any
2 abnormalities” and failed to treat him adequately. *Id.* at 6. In fact, the lab test results were
3 abnormal, and the abnormal results “were obvious to any trained professional physician” and to an
4 L.V.N. *Id.* at 5-6.

5 Over the next six months, Buckins complained to the County through the grievance system
6 and made requests for medical care regarding his increasing pain and dehydration. *Id.* at 6. He
7 also complained to deputies about the quality of his medical care and they told him to stop
8 complaining. *Id.* at 7.

9 On May 8, 2015, Buckins passed a kidney stone and complained to medical staff of having
10 blood in his urine, a burning sensation upon urination, and abdominal pain. *Id.* at 7-8. On May 11,
11 2015, Dr. McCoy ordered more lab tests of Buckins’ urine. *Id.* at 8. The lab tests showed
12 abnormal results. An ultrasound was done on May 19, 2015; the ultrasound report stated that
13 Buckins’ kidneys were “at the lower limits of normal in size” and had abnormal findings. *Id.*

14 On May 27, 2015, Buckins was treated by Jeffrey Cooper, who was a physician’s assistant
15 or possibly a physician. *See id.* at 3, 8. Mr. Cooper explained that Dr. McCoy was no longer
16 Buckins’ doctor. Some of Dr. McCoy’s notes had been erased from the file on the computer. Mr.
17 Cooper ordered antibiotics based on the lab results earlier ordered by Dr. McCoy.

18 At some time before his August 20, 2015 release from Glenn Dyer Jail, Buckins was taken
19 to Highland Hospital for a urology appointment. He was not seen by a doctor; instead, an x-ray
20 was taken and he was returned to jail. *Id.* at 9. Buckins was never seen by a urologist while at
21 Glen Dyer Jail.

22 Buckins was “released” to the San Francisco County Jail on August 20, 2015, after
23 spending a few days at Santa Rita Jail. *Id.* Buckins was interviewed at San Francisco County Jail,
24 but someone at the Glenn Dyer Jail had not sent his medical records with full information about
25 his kidney-related condition. The failure to inform San Francisco County Jail about Plaintiff’s
26 condition caused a delay in starting plaintiff’s treatment. *Id.* at 9.

27 Dr. McCoy refused to give adequately strong pain medication to address Buckins’ kidney-
28 related pain. *Id.* at 6.

1 A. Section 1983 Medical Care Claims

2 Buckins does not allege whether he was a pretrial detainee or had been convicted when the
3 events and omissions giving rise to the claims asserted in this action occurred.¹ His status affects
4 the analysis of his claims because a convicted prisoner's medical care claim arises under the
5 Eighth Amendment to the U.S. Constitution, whereas a pretrial detainee's medical care claim
6 arises under the Fourteenth Amendment to the U.S. Constitution. Until recently, the standards
7 were considered roughly the same under the Eighth and Fourteenth Amendments, *see generally*
8 *Carnell v. Grimm*, 74 F.3d 977, 979 (9th Cir. 1996), but more recently, the two standards have
9 diverged with respect to the mental state requirement for a defendant. Due to the differences in
10 the Eighth and Fourteenth Amendment claims, an inmate-plaintiff's status at the time of the
11 relevant events must be known because some conduct that violates the Fourteenth Amendment
12 won't violate the Eighth Amendment. If a plaintiff has transitioned from being a pretrial detainee
13 to a convict (or vice-versa), both standards may need to be applied -- with one standard being
14 applied to the events that occurred when the person was a pretrial detainee and a different standard
15 being applied to the events that occurred after he was convicted.

16 Deliberate indifference to a prisoner's serious medical needs violates the Eighth
17 Amendment. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Toguchi v. Chung*, 391 F.3d 1051,
18 1057 (9th Cir. 2004). A defendant violates the Eighth Amendment only when two requirements
19 are met: (1) the deprivation alleged is, objectively, sufficiently serious, and (2) the official is,
20 subjectively, deliberately indifferent to the inmate's health or safety. *See Farmer v. Brennan*, 511
21 U.S. 825, 834 (1994). In the medical care context, the prisoner first must identify an objectively
22 serious medical need. *See Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012) (serious
23 medical need exists if "failure to treat a prisoner's condition could result in further significant
24

25 ¹ This court's own records suggest that Buckins may have been a convict for all of the time during
26 which the events and omissions giving rise to the claims in this action occurred. In *United States*
27 *v. Buckins*, N.D. Cal. Case No. 14-cr-387 EMC, a Darrell Buckins was found guilty at an April
28 2015 trial on a charge of escape from a residential reentry center on September 26, 2013. That
same Darrell Buckins had been at the residential reentry center following a conviction and
imposition of a 61-month term of incarceration in 2011 in *United States v. Buckins*, N.D. Cal.
Case No. 10-cr-109 MHP.

1 injury or the unnecessary and wanton infliction of pain.”) Second, the prisoner must allege that
2 the defendant acted with the requisite mental state of deliberate indifference to a risk to the
3 prisoner’s health. Under the Eighth Amendment standard applicable to prisoner claims, a
4 defendant is deliberately indifferent if he knows that a prisoner faces a substantial risk of serious
5 harm and disregards that risk by failing to take reasonable steps to abate it. *Farmer*, 511 U.S. at
6 837. The defendant must not only “be aware of facts from which the inference could be drawn
7 that a substantial risk of serious harm exists,” but he “must also draw the inference.” *Id.*

8 When a pretrial detainee challenges conditions of his confinement, the proper inquiry is
9 whether the conditions amount to punishment in violation of the Due Process Clause of the
10 Fourteenth Amendment. *See Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979). An inmate claiming
11 that jail officials have responded inadequately to his medical needs while he was a pretrial
12 detainee must establish two elements to state a claim under § 1983. First, he must identify an
13 objectively serious medical need. *See Wilhelm*, 680 F.3d at 1122. Second, he must allege that a
14 defendant acted with the requisite mental state of deliberate indifference to the risk to the inmate’s
15 health. It appears that a pretrial detainee must allege facts to show that a defendant “did not take
16 reasonable measures to abate that risk, even though a reasonable officer in the circumstances
17 would have appreciated the high degree or risk involved--making the consequences of the
18 defendant’s conduct obvious.” *Castro v. County of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir.
19 2016 (en banc), *cert. denied*, 137 S. Ct. 831 (2017)).²

20 ² For present purposes, the court assumes that an objective (rather than subjective) standard of
21 deliberate indifference applies to medical care claims from pretrial detainees. The court
22 recognizes the law currently is unsettled as to whether an objective or subjective standard of
23 deliberate indifference applies. *Castro* announced the objective standard in a deliberate-
24 indifference-to-safety claim from a pretrial detainee, and the Ninth Circuit has not yet decided
25 whether the same objective standard of deliberate indifference applies to a medical care claim
26 from a pretrial detainee. Two recent unpublished decisions suggest the issue remains undecided.
27 *See Nyland v. Calaveras County Sheriff’s Jail*, 2017 WL 1435436 (9th Cir. Apr. 24, 2017)
28 (dismissal of claims of constitutionally inadequate medical care for pretrial detainee “was proper
because under any potentially applicable standard, [plaintiff] failed to allege facts sufficient to
show that defendants knew of and disregarded an excessive risk to his health,” citing *Castro* as
well as earlier cases using subjective standard for deliberate indifference claims); *Banks v.*
Castillo, 2017 WL 784643, *1 (9th Cir. Mar. 1, 2017) (unpublished decision) (summary judgment
was proper on a pretrial detainee’s claim of deliberate indifference to medical needs “under any
potential potentially applicable standard,” citing *Castro* as well as earlier cases using subjective
standard for deliberate indifference claims). Other circuits have taken different approaches. *See*
Ryan v. Armstrong, 850 F.3d 419, 425 n.3 (8th Cir. 2017) (citing *Castro* and declining to decide

1 A claim of medical malpractice or mere negligence is insufficient to make out a violation
2 of the Eighth Amendment or the Fourteenth Amendment. *See Toguchi*, 391 F.3d at 1060-61;
3 *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002); *Castro*, 833 F.3d at 1071.

4 Liberally construed, the amended complaint alleges cognizable § 1983 claims against the
5 following defendants for deliberate indifference to Buckins’ medical needs: Dr. McCoy, LVN
6 Walker, Mr. Cooper, Corizon Health Services, Inc., Dr. Orr, Dr. Magat, County of Alameda, and
7 Alameda County Sheriff Gregory Ahern. The liability of Corizon Health Services, Inc., County of
8 Alameda, and Alameda County Sheriff Gregory Ahern rests on a *Monell* theory of liability based
9 on the policies, practices and customs regarding medical care of inmates described in the amended
10 complaint. *See Monell v. Dep’t of Social Servs.*, 436 U.S. 658, 690 (1978); *see generally Board of*
11 *Cty. Comm’rs. of Bryan Cty. v. Brown*, 520 U.S. 397, 403 (1997); *Tsao v. Desert Palace, Inc.*, 698
12 F.3d 1128, 1139, 1144 (9th Cir. 2012) (“we see no basis in the reasoning underlying *Monell* to
13 distinguish between municipalities and private entities acting under color of state law”).

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15 B. State Law Claims

16 Under California law, “[t]he elements of a cause of action for negligence are well
17 established. They are (a) a legal duty to use due care; (b) a breach of such legal duty; [and] (c) the
18 breach as the proximate or legal cause of the resulting injury.” *Ladd v. County of San Mateo*, 12

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20 whether deliberate indifference test is now an objective test for medical care claims by pretrial
21 detainees); *Darnell v. Pineiro*, 849 F.3d 17, 35 n.14 (2d Cir. 2017) (citing *Castro* and holding that
22 objective test for deliberate indifference applies to pretrial detainees’ claims about conditions of
23 confinement, such as overcrowding, sanitation problems, and inadequate nutrition)); *Alderson v.*
24 *Concordia Parish Corr. Facility*, 848 F.3d 415 (5th Cir. 2017) (following Fifth Circuit precedent
25 and declining to adopt objective standard for pretrial detainee’s claim of deliberate indifference to
26 medical needs). Defendants are free to revisit the issue of whether a subjective or objective
27 standard of deliberate indifference should apply to a medical care claim from a pretrial detainee,
28 but the court will assume in the interim that it is an objective standard.

The order of dismissal with leave to amend stated that “[e]ven though pretrial detainees’
medical claims arise under the Due Process Clause, the Eighth Amendment serves as a benchmark
for evaluating those claims. *See Garnell v. Grimm*, 74 F.3d 977, 979 (9th Cir. 1996).” Docket
No. 3 at 3 n.1. Upon further reflection, the court determines that this proposition -- that the
Fourteenth Amendment standard is essentially the same as the Eighth Amendment standard -- is
now open to question for the reasons stated above.

1 Cal. 4th 913, 917 (Cal. 1996) (citations and internal quotation marks omitted).

2 Under California Government Code § 845.6, “a public employee, and the public entity
3 where the employee is acting within the scope of his employment, is liable if the employee knows
4 or has reason to know that the prisoner is in need of immediate medical care and he fails to take
5 reasonable action to summon such medical care.”

6 Liberally construed, the amended complaint alleges cognizable state law claims for
7 negligence and violation of California Government Code § 845.6 (failure to obtain medical care
8 for prisoners) against the following defendants for their responses to plaintiff’s medical needs: Dr.
9 McCoy, LVN Walker, Mr. Cooper, Corizon Health Services, Inc., Dr. Orr, Dr. Magat, County of
10 Alameda, and Alameda County Sheriff Gregory Ahern. There may be claims-presentation or
11 other pleading requirements unique to these state law claims; defendants may assert any such
12 challenges in a motion challenging the pleading.

13
14 **CONCLUSION**

15 1. Liberally construed, the amended complaint states cognizable § 1983 claims and
16 state law claims against Dr. Brenda McCoy, LVN Debra Walker, P.A. Jeffrey Cooper, Corizon
17 Health Services, Inc., Dr. Harold Orr, Dr. Maria Magat, County of Alameda, and Alameda County
18 Sheriff Gregory Ahern.

19 2. The clerk shall issue a summons and the United States Marshal shall serve, without
20 prepayment of fees, the summons, and a copy of the amended complaint, and a copy of this order
21 upon the following defendants:

- 22 - Dr. Brenda McCoy
- 23 - Debra Walker (licensed vocational nurse)
- 24 - Jeffrey Cooper, P.A.
- 25 - Corizon Health Services, Inc.
- 26 - Dr. Harold Orr
- 27 - Dr. Maria Magat
- 28 - County of Alameda
- Alameda County Sheriff Gregory Ahern

Other than Sheriff Ahern, the individual defendants apparently work at Corizon Health Services,
Inc., the health care provider for the Glenn Dyer Jail in Oakland, California.

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

3 a. No later than **August 11, 2017**, defendants must file and serve a motion for
4 summary judgment or other dispositive motion. If defendants are of the opinion that this case
5 cannot be resolved by summary judgment, defendants must so inform the court prior to the date
6 the motion is due. If defendants file a motion for summary judgment, defendants must provide to
7 plaintiff a new *Rand* notice regarding summary judgment procedures at the time they file such a
8 motion. *See Woods v. Carey*, 684 F.3d 934, 939 (9th Cir. 2012).

9 b. Plaintiff's opposition to the summary judgment or other dispositive motion
10 must be filed with the court and served upon defendants no later than **September 8, 2017**.
11 Plaintiff must bear in mind the notice and warning regarding summary judgment provided later in
12 this order as he prepares his opposition to any motion for summary judgment.

13 c. If defendants wish to file a reply brief, the reply brief must be filed and
14 served no later than **September 22, 2017**.

15 4. Plaintiff is provided the following notices and warnings about the procedures for
16 motions for summary judgment:

17 The defendants may make a motion for summary judgment by which they seek to have
18 your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules
19 of Civil Procedure will, if granted, end your case. . . . Rule 56 tells you what you must do
20 in order to oppose a motion for summary judgment. Generally, summary judgment must
21 be granted when there is no genuine issue of material fact -- that is, if there is no real
22 dispute about any fact that would affect the result of your case, the party who asked for
23 summary judgment is entitled to judgment as a matter of law, which will end your case.
24 When a party you are suing makes a motion for summary judgment that is properly
25 supported by declarations (or other sworn testimony), you cannot simply rely on what your
26 complaint says. Instead, you must set out specific facts in declarations, depositions,
27 answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that
28 contradict the facts shown in the defendants' declarations and documents and show that
there is a genuine issue of material fact for trial. If you do not submit your own evidence
in opposition, summary judgment, if appropriate, may be entered against you. If summary
judgment is granted, your case will be dismissed and there will be no trial. *Rand v.*
Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998).

If a defendant files a motion for summary judgment for failure to exhaust administrative remedies,
he is seeking to have the case dismissed. As with other defense summary judgment motions, if a

1 motion for summary judgment for failure to exhaust administrative remedies is granted, the
2 plaintiff's case will be dismissed and there will be no trial.

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

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

12 7. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the
13 court informed of any change of address and must comply with the court's orders in a timely
14 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
15 to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of address in every
16 pending case every time he is moved to a new facility.

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

19 **IT IS SO ORDERED.**

20 Dated: May 11, 2017



21 _____
22 SUSAN ILLSTON
23 United States District Judge
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