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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ERIC WATTS,
Plaintiff,
v.
CAL REMINGTON, et al.,
Defendants.

Case No. [17-cv-01167-JSC](#)

ORDER OF SERVICE

INTRODUCTION

Plaintiff, an inmate at the Maple Street Correctional Center (“MSCC”) in Redwood City, California, filed this pro se civil rights complaint under 42 U.S.C. § 1983 against two MSCC employees, Cal Remington and Dr. Douglas Spencer.¹ Plaintiff filed the complaint in the Eastern District of California, and the case was transferred to this Court. Plaintiff’s application to proceed *in forma pauperis* is granted in a separate order. For the reasons explained below, the complaint is ordered served upon Defendants.

STANDARD OF REVIEW

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). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901

¹ Plaintiff consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (ECF No. 7.)

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F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the statement need only give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim for relief that is plausible on its face.” *Id.* at 1974.

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two 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).

LEGAL CLAIMS

Plaintiff alleges that he was given the wrong medication on January 26, 2017, and when he told the nurse, she said he should “just take them.” Plaintiff alleges that Remington is a “medical supervisor” and Spencer is a doctor, and that they were both aware of the “mistakes” by jail medical staff in dispensing the wrong medications. Plaintiff alleges that “a lot of this kind of negligence has been going on.” These allegations are liberally construed to claim that Defendants were aware of a common problem at the jail that medications were being incorrectly dispensed to inmates and failed to take action to stop this problem from continuing, which led to Plaintiff receive the wrong medication. So construed, the allegations are sufficient to state a cognizable claim for deliberate indifference to his medical needs at MSCC, in violation of his constitutional rights. *See Henry A. v. Willden*, 678 F.3d 991, 1003-04 (9th Cir. 2012) (supervisor may be liable under Section 1983 where there is sufficient causal connection between supervisor’s conduct and constitutional violation); *Carnell v. Grimm*, 74 F.3d 977, 979 (9th Cir. 1996) (standard of

1 deliberate indifference applicable to pretrial detainees' medical claims).

2 **CONCLUSION**

3 1. The Clerk shall issue a summons and Magistrate Judge jurisdiction consent form
4 and the United States Marshal shall serve, without prepayment of fees, the summons, Magistrate
5 Judge jurisdiction consent form, a copy of the complaint with attachments, and a copy of this
6 order on **Cal Remington and Dr. Douglas Spencer** at the **San Mateo County Sheriff's**
7 **Department.**

8 The Clerk shall also mail a courtesy copy of the Magistrate Judge jurisdiction consent
9 form, the complaint with all attachments and a copy of this order to the San Mateo County
10 Counsel's Office.

11 2. Defendants shall complete and file the Magistrate Judge jurisdiction consent form
12 within the deadline provided on the form. They shall also file an answer in accordance with the
13 Federal Rules of Civil Procedure.

14 3. To expedite the resolution of this case:

15 a. No later than **91** days from the date this order is issued, Defendants shall file a
16 motion for summary judgment or other dispositive motion. The motion shall be supported by
17 adequate factual documentation and shall conform in all respects to Federal Rule of Civil
18 Procedure 56, and shall include as exhibits all records and incident reports stemming from the
19 events at issue. If Defendants is of the opinion that this case cannot be resolved by summary
20 judgment, they shall so inform the Court prior to the date the summary judgment motion is due.
21 All papers filed with the Court shall be promptly served on Plaintiff.

22 b. At the time the dispositive motion is served, Defendants shall also serve, on a
23 separate paper, the appropriate notice required by *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th
24 Cir. 1998) (en banc). See *Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012).

25 c. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the
26 Court and served upon Defendants no later than **28 days** from the date the motion is filed.
27 Plaintiff must read the attached page headed "NOTICE -- WARNING," which is provided to him
28 pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc).

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d. Defendants shall file a reply brief no later than **14** days after the opposition is filed.

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

5. All communications by Plaintiff with the Court must be served on Defendants or their counsel once counsel has been designated, by mailing a true copy of the document to Defendants or their counsel.

6. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No further Court order under Federal Rule of Civil Procedure 30(a)(2) is required before the parties may conduct discovery.

7. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address." He also must comply with the Court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). Reasonable requests for an extension of a deadline will be allowed upon a showing of good cause if the request is filed prior to the deadline.

IT IS SO ORDERED.

Dated: May 8, 2017


JACQUELINE SCOTT CORLEY
United States Magistrate Judge

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NOTICE -- WARNING (SUMMARY JUDGMENT)

If Defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary 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, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in Defendant's 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.