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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BOBBY RAY KNIGHT,
Plaintiff,
v.

No. C 17-2035 WHA (PR)

**ORDER OF SERVICE;
INSTRUCTIONS TO CLERK**

MONTEREY COUNTY JAIL;
CAPTAIN JAMES H. BASS; DR.
ELIUD GARCIA,
Defendants.

INTRODUCTION

Plaintiff, an inmate at North Kern State Prison, filed this civil rights case under 42 U.S.C. 1983 alleging that he fell down stairs while housed at the Monterey County Jail due to defendants’ failure provide him adequate medical care and to take adequate safety precautions. He is granted leave to proceed in forma pauperis in a separate order. For the reasons discussed below, the complaint is ordered served upon defendants James H. Bass and Dr. Eliud Garcia. The claims against Monterey County Jail are dismissed.

ANALYSIS

A. 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.

1 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims
2 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
3 monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro
4 se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699
5 (9th Cir. 1990).

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

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

21 **B. LEGAL CLAIMS**

22 When liberally construed, plaintiff's allegations state cognizable claims that defendants
23 Captain James H. Bass and Dr. Eliud Garcia were deliberately indifferent to plaintiff's safety
24 and medical needs by failing to provide him adequate treatment for his low blood pressure,
25 provide safety railings on the stairs to the bathroom or room on the stairs for his walker, in
26 violation of his federal constitutional rights.

27 Plaintiff also names the Monterey County Jail as a defendant. The Monterey County
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1 Jail is a building, not a municipal entity. It would appear that plaintiff means to sue Monterey
2 County, and if that is the case, he must allege that his injuries were caused by a policy or
3 custom at the jail. *See Monell v. Dep't of Social Servs.*, 436 U.S. 658, 690 (1978); *see also*
4 *Board of Cty. Comm'rs. of Bryan Cty. v. Brown*, 520 U.S. 397, 403 (1997) (county may not be
5 held vicariously liable for the unconstitutional acts of its employees under the theory of
6 respondeat superior). To allege a claim against the County of Monterey, plaintiff has to file an
7 amended complaint in which he alleges that: (1) his fall down the stairs violated his
8 constitutional rights; (2) Monterey County had a policy; (3) this policy amounts to deliberate
9 indifference to plaintiff's constitutional rights; and (4) this policy is the moving force behind
10 plaintiff's fall down the stairs. *See Plumeau v. School Dist. #40 County of Yamhill*, 130 F.3d
11 432, 438 (9th Cir. 1997).

12 CONCLUSION

13 For the reasons set out above, it is hereby ordered as follows:

- 14 1. The claims against Monterey County Jail are **DISMISSED**.
- 15 2. The clerk shall issue summons and the United States Marshal shall serve,
16 without prepayment of fees, a copy of the complaint with all attachments thereto, and a copy of
17 this order upon defendants **Captain James H. Bass and Dr. Eliud Garcia** at **Monterey**
18 **County Jail**. A courtesy copy of the complaint with attachments and this order shall also be
19 mailed to the Monterey County Counsel's Office.
- 20 3. Defendants **shall** file an answer in accordance with the Federal Rules of Civil
21 Procedure.
- 22 4. In order to expedite the resolution of this case:
 - 23 a. No later than **91 days** from the date this order is filed, defendants shall file a
24 motion for summary judgment or other dispositive motion. If defendants are of the opinion that
25 this case cannot be resolved by summary judgment, they shall so inform the court prior to the
26 date the summary judgment motion is due. All papers filed with the court shall be promptly
27 served on the plaintiff.

1 b. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the
2 court and served upon defendants no later than **28 days** from the date of service of the motion.
3 Plaintiff must read the attached page headed "NOTICE -- WARNING," which is provided to
4 him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc), and
5 *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

6 c. Defendants **shall** file a reply brief no later than **14 days** after the date of
7 service of the opposition.

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

10 e. Along with his motion, defendants shall proof that they served plaintiff the
11 *Rand* warning at the same time they served him with their motion. Failure to do so will result in
12 the summary dismissal of their motion.

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

16 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
17 No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is
18 required before the parties may conduct discovery.

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

23 7. If plaintiff wishes to file an amended complaint, as discussed above, he must do so
24 within **63 days** of the date this order is filed. The amended complaint must include the caption
25 used in this order and the civil case number C 17-2035 WHA (PR) and the words FIRST
26 AMENDED COMPLAINT on the first page. Because an amended complaint completely

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replaces the original complaint, plaintiff must include in it all the claims he wishes to present.
See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material
from the original complaint by reference.

IT IS SO ORDERED.

Dated: May 31, 2017.



WILLIAM ALSUP
UNITED STATES DISTRICT 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 [current Rule 56(c)], that contradict the facts shown in the 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.