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

KEVIN L. WEBB, H99489,)	
)	
Plaintiff(s),)	No. C 17-3066 CRB (PR)
)	
v.)	ORDER OF SERVICE
)	
CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES, et al.,)	
)	
Defendant(s).)	

Plaintiff, a prisoner at the Correctional Training Facility (CTF) in Soledad, has filed a pro se complaint under 42 U.S.C. § 1983 alleging denial of recommended arthroscopic surgery, and now recommended hip replacement, for a degenerative torn labrum to his left hip. He seeks injunctive relief and money damages.

DISCUSSION

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. § 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

1 granted,” or “seeks monetary relief from a defendant who is immune from such
2 relief.” Id. § 1915A(b). Pro se pleadings must be liberally construed, however.
3 Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
5 essential elements: (1) that a right secured by the Constitution or laws of the
6 United States was violated, and (2) that the alleged violation was committed by a
7 person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48
8 (1988).

9 B. Legal Claims

10 Plaintiff alleges that California Correctional Health Care Services
11 (CCHCS) and Dr. Bright have denied him recommended arthroscopic surgery for
12 a degenerative torn labrum to his left hip since 2008. But after a specialist
13 recently recommended hip replacement, rather than arthroscopic surgery, due to
14 continued degeneration, Dr. Bright denied the hip replacement and recommended
15 arthroscopic surgery. Plaintiff seeks an order compelling defendants to provide
16 him the recommended hip replacement, and money damages for the prolonged
17 denial/delay of recommended treatment.

18 Deliberate indifference to serious medical needs violates the Eighth
19 Amendment’s proscription against cruel and unusual punishment. Estelle v.
20 Gamble, 429 U.S. 97, 104 (1976). A “serious medical need” exists if the failure
21 to treat a prisoner’s condition could result in further significant injury or the
22 “unnecessary and wanton infliction of pain.” McGuckin v. Smith, 974 F.2d
23 1050, 1059 (9th Cir. 1992) (citing Estelle, 429 U.S. at 104), overruled in part on
24 other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir.
25 1997) (en banc). A prison official is “deliberately indifferent” only if he knows
26 that a prisoner faces a substantial risk of serious harm and disregards that risk by
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1 failing to take reasonable steps to abate it. Farmer v. Brennan, 511 U.S. 825, 837
2 (1994). Deliberate indifference may appear when prison officials deny, delay or
3 intentionally interfere with medical treatment, or it may be shown in the way in
4 which prison officials provide medical care. See McGuckin, 974 F.2d at 1062.

5 Liberally construed, plaintiff's allegations appear to state cognizable
6 claims for relief under § 1983 for deliberate indifference to serious medical needs
7 against CCHCS and Dr. Bright, and will be ordered served. See id.

8 **CONCLUSION**

9 For the foregoing reasons and for good cause shown,

10 1. The clerk shall issue summons and the United States Marshal shall
11 serve, without prepayment of fees, copies of the complaint in this matter, all
12 attachments thereto, and copies of this order on the following defendants:

13 CCHCS, P.O. Box 588500, Elk Grove, CA 95758; and Dr. Bright, CTF Medical
14 Staff, P.O. Box 686, Soledad, CA 93960-0686. The clerk also shall serve a copy
15 of this order on plaintiff.

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

18 a. No later than 90 days from the date of this order, defendants
19 shall serve and file a motion for summary judgment or other dispositive motion.

20 A motion for summary judgment must be supported by adequate factual
21 documentation and must conform in all respects to Federal Rule of Civil
22 Procedure 56, and must include as exhibits all records and incident reports
23 stemming from the events at issue. A motion for summary judgment also must
24 be accompanied by a Rand notice so that plaintiff will have fair, timely and
25 adequate notice of what is required of him in order to oppose the motion. Woods
26 v. Carey, 684 F.3d 934, 935 (9th Cir. 2012) (notice requirement set out in Rand
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1 v. Rowland, 154 F.3d 952 (9th Cir. 1998), must be served concurrently with
2 motion for summary judgment). A motion to dismiss for failure to exhaust
3 available administrative remedies (where such a motion, rather than a motion for
4 summary judgment for failure to exhaust, is appropriate) must be accompanied
5 by a similar notice. Stratton v. Buck, 697 F.3d 1004, 1008 (9th Cir. 2012);
6 Woods, 684 F.3d at 935 (notice requirement set out in Wyatt v. Terhune, 315
7 F.3d 1108 (9th Cir. 2003), overruled on other grounds by Albino v. Baca, 747
8 F.3d 1162, 1166 (9th Cir. 2014) (en banc), must be served concurrently with
9 motion to dismiss for failure to exhaust available administrative remedies).

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

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

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

8 Plaintiff also is advised that a motion to dismiss for failure to exhaust
9 available administrative remedies under 42 U.S.C. § 1997e(a) will, if granted,
10 end your case, albeit without prejudice. You must "develop a record" and
11 present it in your opposition in order to dispute any "factual record" presented by
12 the defendants in their motion to dismiss. Wyatt v. Terhune, 315 F.3d 1108,
13 1120 n.14 (9th Cir. 2003). You have the right to present any evidence to show
14 that you did exhaust your available administrative remedies before coming to
15 federal court. Such evidence may include: (1) declarations, which are statements
16 signed under penalty of perjury by you or others who have personal knowledge
17 of relevant matters; (2) authenticated documents – documents accompanied by a
18 declaration showing where they came from and why they are authentic, or other
19 sworn papers such as answers to interrogatories or depositions; (3) statements in
20 your complaint insofar as they were made under penalty of perjury and they show
21 that you have personal knowledge of the matters state therein. In considering a
22 motion to dismiss for failure to exhaust, the court can decide disputed issues of
23 fact with regard to this portion of the case. Stratton, 697 F.3d at 1008-09.

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

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

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


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

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

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

17 SO ORDERED.

18 DATED: August 4, 2017



19 CHARLES R. BREYER
United States District Judge