

United States District Court
For the Northern District of California

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

ISIAH LUCAS, JR.,
Plaintiff,
v.
LT. SILVA, et al.,
Defendants.

No. C 07-1673 CW (PR)
ORDER OF SERVICE

Plaintiff Isiah Lucas, Jr., a state prisoner currently incarcerated at Pleasant Valley State Prison (PVSP), has filed the present pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging that prison officials at the Correctional Training Facility (CTF) were deliberately indifferent to his serious medical needs while he was incarcerated there in 2006. His motion for leave to proceed in forma pauperis has been granted.

Venue is proper in this district because the acts complained of occurred at CTF, which is located in Monterey County. 28 U.S.C. §§ 84(a), 1391(b).

DISCUSSION

I. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally

1 construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696,
2 699 (9th Cir. 1988).

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

9 II. Legal Claims

10 A. Injunctive Relief

11 Plaintiff seeks both injunctive relief and monetary damages.
12 However, he is no longer incarcerated at the prison where the
13 alleged violations took place. The jurisdiction of the federal
14 courts depends on the existence of a "case or controversy" under
15 Article III of the Constitution. Pub. Utils. Comm'n of State of
16 Cal. v. FERC, 100 F.3d 1451, 1458 (9th Cir. 1996). A claim is
17 considered moot if it has lost its character as a present, live
18 controversy, and if no effective relief can be granted: "Where the
19 question sought to be adjudicated has been mooted by developments
20 subsequent to filing of the complaint, no justiciable controversy
21 is presented." Flast v. Cohen, 392 U.S. 83, 95 (1968). Where
22 injunctive relief is involved, questions of mootness are determined
23 in light of the present circumstances. See Mitchell v. Dupnik, 75
24 F.3d 517, 528 (9th Cir. 1996).

25 When an inmate has been transferred to another prison and
26 there is no reasonable expectation nor demonstrated probability
27 that he will again be subjected to the prison conditions from which
28 he seeks injunctive relief, the claim for injunctive relief should

1 be dismissed as moot. See Dilley v. Gunn, 64 F.3d 1365, 1368-69
2 (9th Cir. 1995). A claim that the inmate might be re-transferred
3 to the prison where the injury occurred is too speculative to
4 overcome mootness. Id.

5 Plaintiff has alleged unconstitutional conditions of
6 confinement during the period of his confinement at CTF. Plaintiff
7 sought injunctive relief to remedy these alleged injuries. On
8 April 20, 2007, Plaintiff informed the Court he had been
9 transferred to PVSP. Because Plaintiff has not been incarcerated
10 at CTF since 2006, his claims for injunctive relief from the
11 conditions of his confinement at CTF are DISMISSED as moot. The
12 Court reviews Plaintiff's remaining claims for damages.

13 B. Deliberate Indifference Claim

14 Plaintiff alleges that Defendants CTF Warden Ben Curry,
15 Sergeant M. Miranda, Lieutenant Silva and Captain Jarvis denied him
16 adequate medical care. Plaintiff claims that they knew that he had
17 a medical chrono to be assigned to a lower bunk due to his chronic
18 back pains, and that they nevertheless ignored his chrono and were
19 responsible for assigning him to an upper bunk from April 20, 2006
20 through July 8, 2006. Plaintiff claims that during this eighty-day
21 period, he suffered "pain/agony" because of the chronic back pains
22 and knee problems he experienced from being assigned to an upper
23 bunk.

24 Deliberate indifference to serious medical needs violates the
25 Eighth Amendment's proscription against cruel and unusual
26 punishment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976);
27 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled
28 on other grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133,

1 1136 (9th Cir. 1997) (en banc); Jones v. Johnson, 781 F.2d 769, 771
2 (9th Cir. 1986). A determination of "deliberate indifference"
3 involves an examination of two elements: the seriousness of the
4 prisoner's medical need and the nature of the defendant's response
5 to that need. See McGuckin, 974 F.2d at 1059. A "serious" medical
6 need exists if the failure to treat a prisoner's condition could
7 result in further significant injury or the "unnecessary and wanton
8 infliction of pain." Id. (citing Estelle v. Gamble, 429 U.S. at
9 104). A prison official is deliberately indifferent if he knows
10 that a prisoner faces a substantial risk of serious harm and
11 disregards that risk by failing to take reasonable steps to abate
12 it. Farmer v. Brennan, 511 U.S. 825, 837 (1994).

13 The fact that Plaintiff was issued a medical chrono --
14 permitting him to be assigned to a lower bunk -- supports an
15 inference that Plaintiff had a serious medical need for this
16 accommodation. Plaintiff alleges that Defendants acted with
17 deliberate indifference because they ignored his chrono and were
18 responsible for assigning him to an upper bunk for a period of
19 eighty days, during which he suffered "pain/agony." The
20 allegations of the complaint are sufficient to state a COGNIZABLE
21 claim for deliberate indifference to Plaintiff's serious medical
22 needs against Defendants Curry, Miranda, Silva and Jarvis.

23 C. Claim Against Defendant Guerra

24 Defendant CTF Captain Guerra is named as a Defendant, but
25 Defendant Guerra is not mentioned in the statement of claim.

26 Plaintiff has failed to link Defendant Guerra to any of the
27 alleged wrongs he has suffered. Liability may be imposed on an
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1 individual defendant under § 1983 if the plaintiff can show that
2 the defendant proximately caused the deprivation of a federally
3 protected right. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir.
4 1988); Harris v. City of Roseburg, 664 F.2d 1121, 1125 (9th Cir.
5 1981). A person deprives another of a constitutional right within
6 the meaning of § 1983 if he does an affirmative act, participates
7 in another's affirmative act or omits to perform an act which he is
8 legally required to do, that causes the deprivation of which the
9 plaintiff complains. See Leer, 844 F.2d at 633. The inquiry into
10 causation must be individualized and focus on the duties and
11 responsibilities of each individual defendant whose acts or
12 omissions are alleged to have caused a constitutional deprivation.
13 See id. Sweeping conclusory allegations will not suffice; the
14 plaintiff must instead "set forth specific facts as to each
15 individual defendant's" violation of his protected rights. Id. at
16 634.

17 If Plaintiff intends to sue Defendant Guerra as a supervisor,
18 he must allege that Defendant Guerra "participated in or directed
19 the violations, or knew of the violations and failed to act to
20 prevent them." Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.
21 1989). Plaintiff has not made such a claim.

22 Accordingly, Plaintiff's claim against Defendant Guerra is
23 DISMISSED WITH LEAVE TO AMEND. Plaintiff may name Defendant Guerra
24 as a Defendant in an amendment to the complaint if he can in good
25 faith describe what Defendant Guerra did that violated Plaintiff's
26 constitutional rights.

27 D. Claims Against All Employees at CTF

28 Plaintiff names "all employees" at CTF as Defendants. A

1 defendant cannot be held liable simply based on his membership in a
2 group without showing his individual participation in unlawful
3 conduct. Chuman v. Wright, 76 F.3d 292, 294 (9th Cir. 1996).
4 Either personal involvement or integral participation of each
5 defendant in the alleged constitutional violation is required
6 before liability may be imposed. See Jones v. Williams, 297 F.3d
7 930, 936 (9th Cir. 2002). Plaintiff cannot name "all employees" at
8 CTF as Defendants without naming and linking specifically each CTF
9 employee to his deliberate indifference claim. Accordingly, all
10 claims against the Defendant group of "all employees" at CTF (as
11 opposed to individually named employees at CTF) are DISMISSED WITH
12 PREJUDICE.

13 CONCLUSION

14 For the foregoing reasons, the Court orders as follows:

- 15 1. Plaintiff's claims for injunctive relief are DISMISSED as
16 moot.
- 17 2. Plaintiff has stated a COGNIZABLE Eighth Amendment claim
18 against Defendants Curry, Miranda, Silva and Jarvis for deliberate
19 indifference to his serious medical needs.
- 20 3. Plaintiff's claim against Defendant Guerra is DISMISSED
21 WITH LEAVE TO AMEND as indicated above. Within thirty (30) days of
22 the date of this Order Plaintiff may file an amended claim against
23 Defendants Guerra as set forth above in Section II(C) of this
24 Order. Plaintiff shall resubmit only that claim and not the entire
25 complaint. Plaintiff must clearly label the document an "Amendment
26 to the Complaint," and write in the case number for this action,
27 Case No. C 07-1673 CW (PR). The failure to do so will result in
28 the dismissal without prejudice of his claim against Defendant

1 Guerra.

2 4. All claims against the Defendant group of "all employees"
3 at CTF are DISMISSED WITH PREJUDICE.

4 5. The Clerk of the Court shall mail a Notice of Lawsuit and
5 Request for Waiver of Service of Summons, two copies of the Waiver
6 of Service of Summons, a copy of the complaint and all attachments
7 thereto (docket no. 1) and a copy of this Order to CTF Warden Ben
8 Curry, CTF Lieutenant Silva, CTF Captain Jarvis, and CTF Sergeant
9 M. Miranda. The Clerk of the Court shall also mail a copy of the
10 complaint and a copy of this Order to the State Attorney General's
11 Office in San Francisco. Additionally, the Clerk shall mail a copy
12 of this Order to Plaintiff.

13 6. Defendants are cautioned that Rule 4 of the Federal Rules
14 of Civil Procedure requires them to cooperate in saving unnecessary
15 costs of service of the summons and complaint. Pursuant to Rule 4,
16 if Defendants, after being notified of this action and asked by the
17 Court, on behalf of Plaintiff, to waive service of the summons,
18 fail to do so, they will be required to bear the cost of such
19 service unless good cause be shown for their failure to sign and
20 return the waiver form. If service is waived, this action will
21 proceed as if Defendants had been served on the date that the
22 waiver is filed, except that pursuant to Rule 12(a)(1)(B),
23 Defendants will not be required to serve and file an answer before
24 sixty (60) days from the date on which the request for waiver was
25 sent. (This allows a longer time to respond than would be required
26 if formal service of summons is necessary.) Defendants are asked
27 to read the statement set forth at the foot of the waiver form that
28 more completely describes the duties of the parties with regard to

1 waiver of service of the summons. If service is waived after the
2 date provided in the Notice but before Defendants have been
3 personally served, the Answer shall be due sixty (60) days from the
4 date on which the request for waiver was sent or twenty (20) days
5 from the date the waiver form is filed, whichever is later.

6 7. Defendants shall answer the complaint in accordance with
7 the Federal Rules of Civil Procedure. The following briefing
8 schedule shall govern dispositive motions in this action:

9 a. No later than ninety (90) days from the date their
10 answer is due, Defendants shall file a motion for summary judgment
11 or other dispositive motion. The motion shall be supported by
12 adequate factual documentation and shall conform in all respects to
13 Federal Rule of Civil Procedure 56. If Defendants are of the
14 opinion that this case cannot be resolved by summary judgment, they
15 shall so inform the Court prior to the date the summary judgment
16 motion is due. All papers filed with the Court shall be promptly
17 served on Plaintiff.

18 b. Plaintiff's opposition to the dispositive motion
19 shall be filed with the Court and served on Defendants no later
20 than sixty (60) days after the date on which Defendants' motion is
21 filed. The Ninth Circuit has held that the following notice should
22 be given to pro se plaintiffs facing a summary judgment motion:

23 The defendants have made a motion for summary
24 judgment by which they seek to have your case dismissed.
25 A motion for summary judgment under Rule 56 of the
Federal Rules of Civil Procedure will, if granted, end
your case.

26 Rule 56 tells you what you must do in order to
27 oppose a motion for summary judgment. Generally, summary
28 judgment must be granted when there is no genuine issue
of material fact -- that is, if there is no real dispute

1 about any fact that would affect the result of your case,
2 the party who asked for summary judgment is entitled to
3 judgment as a matter of law, which will end your case.
4 When a party you are suing makes a motion for summary
5 judgment that is properly supported by declarations (or
6 other sworn testimony), you cannot simply rely on what
7 your complaint says. Instead, you must set out specific
8 facts in declarations, depositions, answers to
9 interrogatories, or authenticated documents, as provided
10 in Rule 56(e), that contradict the facts shown in the
11 defendant's declarations and documents and show that
12 there is a genuine issue of material fact for trial. If
13 you do not submit your own evidence in opposition,
14 summary judgment, if appropriate, may be entered against
15 you. If summary judgment is granted [in favor of the
16 defendants], your case will be dismissed and there will
17 be no trial.

18 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en
19 banc).

20 Plaintiff is advised to read Rule 56 of the Federal Rules of
21 Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
22 (party opposing summary judgment must come forward with evidence
23 showing triable issues of material fact on every essential element
24 of his claim). Plaintiff is cautioned that because he bears the
25 burden of proving his allegations in this case, he must be prepared
26 to produce evidence in support of those allegations when he files
27 his opposition to Defendants' dispositive motion. Such evidence
28 may include sworn declarations from himself and other witnesses to
the incident, and copies of documents authenticated by sworn
declaration. Plaintiff will not be able to avoid summary judgment
simply by repeating the allegations of his complaint.

c. If Defendants wish to file a reply brief, they shall
do so no later than thirty (30) days after the date Plaintiff's
opposition is filed.

d. The motion shall be deemed submitted as of the date

1 the reply brief is due. No hearing will be held on the motion
2 unless the Court so orders at a later date.

3 8. Discovery may be taken in this action in accordance with
4 the Federal Rules of Civil Procedure. Leave of the Court pursuant
5 to Rule 30(a)(2) is hereby granted to Defendants to depose
6 Plaintiff and any other necessary witnesses confined in prison.

7 9. All communications by Plaintiff with the Court must be
8 served on Defendants, or Defendants' counsel once counsel has been
9 designated, by mailing a true copy of the document to Defendants or
10 Defendants' counsel.

11 10. It is Plaintiff's responsibility to prosecute this case.
12 Plaintiff must keep the Court informed of any change of address and
13 must comply with the Court's orders in a timely fashion.

14 11. Extensions of time are not favored, though reasonable
15 extensions will be granted. Any motion for an extension of time
16 must be filed no later than fifteen (15) days prior to the deadline
17 sought to be extended.

18 IT IS SO ORDERED.

19 DATED: 10/28/09



CLAUDIA WILKEN
United States District Judge

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 ISIAH LUCAS JR.,

5 Plaintiff,

6 v.

7 M. MIRANDA et al,

8 Defendant.

Case Number: CV07-01673 CW

CERTIFICATE OF SERVICE

9
10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

11 That on October 28, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Isiah Lucas E-91878
16 Pleasant Valley State Prison
17 B/4-108
18 P.O. Box 8502
19 Coalinga, CA 93210

20 Attorney General
21 State of California
22 455 Golden Gate Avenue, #11000
23 San Francisco, CA 94102

24 Dated: October 28, 2009

25 Richard W. Wieking, Clerk
26 By: Sheilah Cahill, Deputy Clerk
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