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

ANDRE L. HART,	)	No. C 08-00648 CW (PR)
	)	
Plaintiff,	)	ORDER OF SERVICE AND
	)	REFERRING CASE TO PRO SE
v.	)	PRISONER SETTLEMENT PROGRAM
	)	
SGT. K. JOHNSON, et al.,	)	
	)	
Defendants.	)	

Plaintiff Andre L. Hart, a state prisoner currently incarcerated at the California State Prison - Corcoran (Corcoran), has filed the present pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging that prison officials at Salinas Valley State Prison (SVSP) were deliberately indifferent to his safety. His motion for leave to proceed in forma pauperis has been granted.

BACKGROUND

Plaintiff alleges that, on December 30, 2006, Defendant SVSP Correctional Sergeant K. Johnson was deliberately indifferent to his safety by placing him in a cell with inmate Venson, a "documented enemy." (Compl. at 3.) After Plaintiff was placed inside the cell, inmate Venson "approached the food/cuff port to have his handcuffs removed." (Compl., Ex. A, Incident Report Part A1 at 2.) "As soon as [inmate Venson's] handcuffs were removed, he immediately charged at [Plaintiff], and swung with a closed fist at the head and upper torso area of [Plaintiff]." (Id.) Throughout the assault, Plaintiff was handcuffed and unable to defend himself. (Id.)

Plaintiff also claims that Defendant SVSP Correctional Officer L. Stepp was deliberately indifferent to Plaintiff's safety by failing to intervene "because [Defendant Stepp] was suppose[d] to

1 intervene and not allow the malicious and intentional act of  
2 placing plaintiff into a cell with a known documented enemy which  
3 place[d] plaintiff's life in jeopardy . . . ." (Compl. Attach.,  
4 Statement of Claim at 1.)

5 Plaintiff alleges a supervisory liability claim against an  
6 unnamed SVSP Correctional Lieutenant at Facility D, whom he refers  
7 to as "John Doe Lt.," for allowing Defendant Johnson to place him  
8 in a cell with inmate Venson. (Compl. at 2.)

9 Plaintiff seeks injunctive relief and monetary damages for his  
10 physical and emotional injuries.

11 DISCUSSION

12 I. Standard of Review

13 A federal court must conduct a preliminary screening in any  
14 case in which a prisoner seeks redress from a governmental entity  
15 or officer or employee of a governmental entity. See 28 U.S.C.  
16 § 1915A(a). In its review, the court must identify cognizable  
17 claims and dismiss any claims that are frivolous, malicious, fail  
18 to state a claim upon which relief may be granted or seek monetary  
19 relief from a defendant who is immune from such relief. See id.  
20 § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally  
21 construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696,  
22 699 (9th Cir. 1988).

23 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
24 allege two essential elements: (1) that a right secured by the  
25 Constitution or laws of the United States was violated, and  
26 (2) that the alleged violation was committed by a person acting  
27 under the color of state law. See West v. Atkins, 487 U.S. 42, 48  
28 (1988).

1 II. Legal Claims

2 A. Injunctive Relief Claims

3 Plaintiff seeks both injunctive relief and money damages. The  
4 jurisdiction of the federal courts depends on the existence of a  
5 "case or controversy" under Article III of the Constitution. Pub.  
6 Util. Comm'n of State of Cal. v. FERC, 100 F.3d 1451, 1458 (9th  
7 Cir. 1996). A claim is considered moot if it has lost its  
8 character as a present, live controversy and if no effective relief  
9 can be granted; where the question sought to be adjudicated has  
10 been mooted by developments subsequent to filing of the complaint,  
11 no justiciable controversy is presented. Flast v. Cohen, 392 U.S.  
12 83, 95 (1968). Where injunctive relief is requested, questions of  
13 mootness are determined in light of the present circumstances. See  
14 Mitchell v. Dupnik, 75 F.3d 517, 528 (9th Cir. 1996).

15 When an inmate has been transferred to another prison and  
16 there is no reasonable expectation nor demonstrated probability  
17 that he will again be subjected to the prison conditions from which  
18 he seeks injunctive relief, the claim for injunctive relief should  
19 be dismissed as moot. See Dilley v. Gunn, 64 F.3d 1365, 1368-69  
20 (9th Cir. 1995). A claim that the inmate might be re-transferred  
21 to the prison where the injury occurred is too speculative to  
22 overcome mootness. Id.

23 Because all Plaintiff's claims for injunctive relief are  
24 against SVSP officials and he is no longer incarcerated at SVSP,  
25 his claims are DISMISSED as moot. See Mitchell, 75 F.3d at 528.

26 B. Deliberate Indifference to Safety Needs

27 The Eighth Amendment's prohibition of cruel and unusual  
28 punishment requires that prison officials take reasonable measures

1 for the safety of inmates. See Farmer v. Brennan, 511 U.S. 825,  
2 834 (1994). In particular, officials have a duty to protect  
3 inmates from violence at the hands of other inmates. See id. at  
4 833. A prison official violates the Eighth Amendment only when two  
5 requirements are met: (1) the deprivation alleged is, objectively,  
6 sufficiently serious, and (2) the official is, subjectively,  
7 deliberately indifferent to the inmate's safety. See id. at 834.

8 Liberally construed, the allegations of the complaint state a  
9 cognizable Eighth Amendment claim against Defendants Johnson and  
10 Stepp for deliberate indifference to Plaintiff's safety.

11 III. Doe Defendant

12 Plaintiff identifies Defendant "John Doe Lt." as a Doe  
13 Defendant whose name he intends to learn through discovery.  
14 (Compl. Attach., Statement of Claim at 2.) The use of Doe  
15 Defendants is not favored in the Ninth Circuit. See Gillespie v.  
16 Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). However, where the  
17 identity of alleged defendants cannot be known prior to the filing  
18 of a complaint the plaintiff should be given an opportunity through  
19 discovery to identify them. Id. Failure to afford the plaintiff  
20 such an opportunity is error. See Wakefield v. Thompson, 177 F.3d  
21 1160, 1163 (9th Cir. 1999).

22 Accordingly, the claims against Defendant "John Doe Lt." are  
23 DISMISSED from this action without prejudice. Should Plaintiff  
24 learn that Defendant's identity he may move to file an amendment to  
25 the complaint to add him as a named defendant. See Brass v. County  
26 of Los Angeles, 328 F.3d 1192, 1195-98 (9th Cir. 2003). However,  
27 if Plaintiff is alleging that Defendant "John Doe Lt." is liable as  
28

1 a supervisor, he must allege Defendant "John Doe Lt." "participated  
2 in or directed the violations, or knew of the violations and failed  
3 to act to prevent them." Taylor v. List, 880 F.2d 1040, 1045 (9th  
4 Cir. 1989). A supervisor may be liable under § 1983 upon a showing  
5 of personal involvement in the constitutional deprivation or a  
6 sufficient causal connection between the supervisor's wrongful  
7 conduct and the constitutional violation. Redman v. County of San  
8 Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc) (citation  
9 omitted). A supervisor therefore generally "is only liable for  
10 constitutional violations of his subordinates if the supervisor  
11 participated in or directed the violations, or knew of the  
12 violations and failed to act to prevent them." Taylor, 880 F.2d at  
13 1045. A supervisor may be liable for implementing "a policy so  
14 deficient that the policy itself is a repudiation of constitutional  
15 rights and is the moving force of the constitutional violation."  
16 Redman, 942 F.2d at 1446; see Jeffers v. Gomez, 267 F.3d 895, 917  
17 (9th Cir. 2001).

18 IV. Pro Se Prisoner Settlement Program

19 The Northern District of California has established a Pro Se  
20 Prisoner Settlement Program. Certain prisoner civil rights cases  
21 may be referred to a neutral magistrate judge for settlement  
22 proceedings. The proceedings will consist of one or more  
23 conferences as determined by Magistrate Judge Nandor Vadas. The  
24 conferences shall be conducted at Corcoran with Defendants and/or  
25 the representative for Defendants attending by videoconferencing if  
26 they so choose.

27 Good cause appearing, the present case will be REFERRED to  
28 Magistrate Judge Vadas for settlement proceedings pursuant to the

1 Pro Se Prisoner Settlement Program. The proceedings shall take  
2 place within one-hundred twenty (120) days after the date of this  
3 Order, or as soon thereafter as is convenient to the magistrate  
4 judge's calendar. Magistrate Judge Vadas shall coordinate a time  
5 and date for a settlement proceeding with all interested parties  
6 and/or their representatives and, within ten (10) days after the  
7 conclusion of the settlement proceedings, file with the Court a  
8 report regarding the settlement proceedings.

9 CONCLUSION

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

- 11 1. Plaintiff's claims for injunctive relief are DISMISSED as  
12 moot.
- 13 2. Plaintiff has adequately alleged a cognizable Eighth  
14 Amendment claim against Defendants Johnson and Stepp for deliberate  
15 indifference to his safety.
- 16 3. Plaintiff's claims against Defendant "John Doe Lt." are  
17 DISMISSED without prejudice.
- 18 4. Plaintiff's action is referred to the Pro Se Prisoner  
19 Settlement Program. The Clerk of the Court shall provide a copy of  
20 the court documents that are not available electronically, and a  
21 copy of this Order, to Magistrate Judge Vadas in Eureka,  
22 California.
- 23 5. The Clerk of the Court shall mail a Notice of Lawsuit and  
24 Request for Waiver of Service of Summons, two copies of the Waiver  
25 of Service of Summons, a copy of the complaint and all attachments  
26 thereto (docket no. 1) and a copy of this Order to Defendants SVSP  
27 Correctional Sergeant K. Johnson and SVSP Correctional Officer L.  
28 Stepp. The Clerk of the Court shall also mail a copy of the

1 complaint and a copy of this Order to the State Attorney General's  
2 Office in San Francisco. Additionally, the Clerk shall mail a copy  
3 of this Order to Plaintiff.

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

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

28             a. No later than ninety (90) days from the date their

1 answer is due, Defendants shall file a motion for summary judgment  
2 or other dispositive motion. The motion shall be supported by  
3 adequate factual documentation and shall conform in all respects to  
4 Federal Rule of Civil Procedure 56. If Defendants are of the  
5 opinion that this case cannot be resolved by summary judgment, they  
6 shall so inform the Court prior to the date the summary judgment  
7 motion is due. All papers filed with the Court shall be promptly  
8 served on Plaintiff.

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

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

17           Rule 56 tells you what you must do in order to  
18 oppose a motion for summary judgment. Generally, summary  
19 judgment must be granted when there is no genuine issue  
20 of material fact -- that is, if there is no real dispute  
21 about any fact that would affect the result of your case,  
22 the party who asked for summary judgment is entitled to  
23 judgment as a matter of law, which will end your case.  
24 When a party you are suing makes a motion for summary  
25 judgment that is properly supported by declarations (or  
26 other sworn testimony), you cannot simply rely on what  
27 your complaint says. Instead, you must set out specific  
28 facts in declarations, depositions, answers to  
interrogatories, or authenticated documents, as provided  
in Rule 56(e), 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 [in favor of the  
defendants], your case will be dismissed and there will  
be no trial.

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

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

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

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

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

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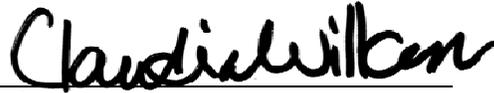
1 Defendants' counsel.

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

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

9 IT IS SO ORDERED.

10 DATED: 10/21/08



11 CLAUDIA WILKEN  
12 United States District Judge

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

4 ANDRE L. HART,

5 Plaintiff,

6 v.

7 K. JOHNSON et al,

8 Defendant.  
\_\_\_\_\_ /

Case Number: CV08-00648 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 21, 2008, 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 Andre L. Hart D-18158  
16 Corcoran State Prison  
17 P.O. Box 3481  
18 Corcoran, CA 93212

19 Magistrate Judge Nandor Vadas  
20 U.S. District Court  
21 514 H Street  
22 P.O. Box 1306  
23 Eureka, CA 95502

24 Dated: October 21, 2008

25 Richard W. Wieking, Clerk  
26 By: Sheilah Cahill, Deputy Clerk  
27  
28