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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

THEODORE D. JONES,

No. C 08-04172 CW (PR)

Plaintiff,

ORDER OF SERVICE

v.

SAN FRANCISCO COUNTY SHERIFF
MICHAEL HENNESSEY, et al.,Defendants.

INTRODUCTION

Plaintiff, a state prisoner, has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging that Defendants used excessive force against him and were deliberately indifferent to his serious medical needs.

Plaintiff's motion for leave to proceed in forma pauperis has been granted. He has since paid the full filing fee.

Venue is proper because the events giving rise to the claim are alleged to have occurred at the San Francisco County Jail (SFCJ), which is located in this judicial district. See 28 U.S.C. § 1391(b).

In his complaint, Plaintiff names the following Defendants: SFCJ Sheriff Michael Hennessey; SFCJ Sergeants McCollough (#1390) and Threats (#707); and SFCJ Deputies Laval (#1559) and Shimaura¹ (#1566). Plaintiff seeks monetary damages.

DISCUSSION

I. Standard of Review

A federal court must conduct a preliminary screening in any

¹ Plaintiff spelled Defendant Shimaura's name as "Shamura" in his complaint. Clerk's staff has confirmed that the correct spelling is "Shimaura."

1 case in which a prisoner seeks redress from a governmental entity
2 or officer or employee of a governmental entity. 28 U.S.C.
3 § 1915A(a). In its review, the court must identify any cognizable
4 claims and dismiss any claims that are frivolous, malicious, fail
5 to state a claim upon which relief may be granted or seek monetary
6 relief from a defendant who is immune from such relief. Id.
7 § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.
8 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
9 1988).

10 To state a claim under 42 U.S.C. § 1983, a plaintiff must
11 allege two essential elements: (1) that a right secured by the
12 Constitution or laws of the United States was violated, and
13 (2) that the alleged violation was committed by a person acting
14 under the color of state law. West v. Atkins, 487 U.S. 42, 48
15 (1988).

16 II. Legal Claims

17 A. Excessive Force

18 A prisoner has the right to be free from cruel and unusual
19 punishment, including physical abuse by guards. Whenever prison
20 officials stand accused of using excessive physical force in
21 violation of the Eighth Amendment, the core judicial inquiry is
22 whether force was applied in a good-faith effort to maintain or
23 restore discipline, or maliciously and sadistically to cause harm.
24 Hudson v. McMillian, 503 U.S. 1, 6 (1992) (citing Whitley v.
25 Albers, 475 U.S. 312, 317 (1986)).

26 Plaintiff alleges that on March 11, 2008, he was subjected to
27 excessive force by Defendant Laval. Specifically, Defendant Laval
28 took Plaintiff to an "isolated area" and "became enraged striking,

1 punching, kicking [Plaintiff], and poking his finger in
2 [Plaintiff's] eye sockets." (Compl. at 3.) Plaintiff claims that
3 he was handcuffed during the "violent beating." (Compl., Attach.
4 at 1.) He alleges that he sustained injuries as a result of this
5 incident.

6 Plaintiff alleges Defendants McCollough, Threats and Shimaura
7 are liable for "covering up assault inflicted by Deputy Laval."
8 (Id.) However, such an allegation fails to state a claim for
9 relief.

10 Liberally construed, Plaintiff's complaint states a cognizable
11 Eighth Amendment claim against Defendant Laval. Plaintiff's claim
12 against Defendants McCollough, Threats and Shimaura based on their
13 alleged actions of "covering up" the incident is DISMISSED for
14 failure to state a claim.

15 B. Deliberate Indifference Claim

16 Plaintiff's allegations also state a claim for deliberate
17 indifference to his serious medical needs.

18 Deliberate indifference to serious medical needs violates the
19 Eighth Amendment's proscription against cruel and unusual
20 punishment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976);
21 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled
22 on other grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133,
23 1136 (9th Cir. 1997) (en banc); Jones v. Johnson, 781 F.2d 769, 771
24 (9th Cir. 1986). A determination of "deliberate indifference"
25 involves an examination of two elements: the seriousness of the
26 prisoner's medical need and the nature of the defendant's response
27 to that need. See McGuckin, 974 F.2d at 1059. A "serious" medical
28 need exists if the failure to treat a prisoner's condition could

1 result in further significant injury or the "unnecessary and wanton
2 infliction of pain." Id. (citing Estelle v. Gamble, 429 U.S. at
3 104). A prison official is deliberately indifferent if he or she
4 knows that a prisoner faces a substantial risk of serious harm and
5 disregards that risk by failing to take reasonable steps to abate
6 it. Farmer v. Brennan, 511 U.S. 825, 837 (1994).

7 Plaintiff states that he suffered from "significant injuries
8 to [his] shoulder, knee and hip." (Compl., Attach at 1.).
9 Defendants refused to provide Plaintiff with medical treatment for
10 his injuries.

11 Plaintiff has adequately pled a cognizable claim against
12 Defendants Laval, McCollough, Threats and Shimaura for deliberate
13 indifference to his medical needs.

14 C. Supervisory Liability

15 In addition to naming Defendants Laval, McCollough, Threats
16 and Shimaura, Plaintiff also names Defendant Hennessey on the basis
17 of supervisory liability.

18 A supervisor may be liable under § 1983 upon a showing of
19 (1) personal involvement in the constitutional deprivation or (2) a
20 sufficient causal connection between the supervisor's wrongful
21 conduct and the constitutional violation. Redman v. County of San
22 Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc) (citation
23 omitted). Here, Plaintiff has alleged neither.

24 Accordingly, Plaintiff's supervisory liability claim against
25 Defendant Hennessey is DISMISSED with leave to amend. Plaintiff
26 may file an amendment to the complaint alleging supervisory
27 liability under the standards explained above.

28

CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. Plaintiff states a cognizable Eighth Amendment claim for the use of excessive force against Defendant Laval. Plaintiff's claim against Defendants McCollough, Threats and Shimaura based on their alleged actions of "covering up" the incident is DISMISSED for failure to state a claim.

2. Plaintiff states a cognizable Eighth Amendment claim for deliberate indifference to serious medical needs against Defendants Laval, McCollough, Threats and Shimaura.

3. Plaintiff's supervisory liability claim against Defendant Hennessey is DISMISSED WITH LEAVE TO AMEND as indicated above.

4. Within thirty (30) days of the date of this Order Plaintiff may file an amended supervisory liability claim against Defendant Hennessey as set forth above in Section II(C) of this Order. (Plaintiff shall resubmit only that claim and not the entire complaint.) The failure to do so will result in the dismissal without prejudice of the supervisory liability claim against Defendant Hennessey.

5. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint and all attachments thereto (docket no. 1) and a copy of this Order to SFCJ Sergeants McCollough (#1390) and Threats (#707) as well as SFCJ Deputies Laval (#1559) and Shimaura (#1566). The Clerk of the Court shall also mail a courtesy copy of the complaint and a copy of this Order to the San Francisco County Counsel's Office. Additionally, the Clerk shall mail a copy of this Order to Plaintiff.

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

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

25 a. No later than ninety (90) days from the date their
26 answer is due, Defendants shall file a motion for summary judgment
27 or other dispositive motion. The motion shall be supported by
28 adequate factual documentation and shall conform in all respects to

1 Federal Rule of Civil Procedure 56. If Defendants are of the
2 opinion that this case cannot be resolved by summary judgment, they
3 shall so inform the Court prior to the date the summary judgment
4 motion is due. All papers filed with the Court shall be promptly
5 served on Plaintiff.

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

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

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

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

27 Plaintiff is advised to read Rule 56 of the Federal Rules of
28 Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)

1 (party opposing summary judgment must come forward with evidence
2 showing triable issues of material fact on every essential element
3 of his claim). Plaintiff is cautioned that because he bears the
4 burden of proving his allegations in this case, he must be prepared
5 to produce evidence in support of those allegations when he files
6 his opposition to Defendants' dispositive motion. Such evidence
7 may include sworn declarations from himself and other witnesses to
8 the incident, and copies of documents authenticated by sworn
9 declaration. Plaintiff will not be able to avoid summary judgment
10 simply by repeating the allegations of his complaint.

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

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

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

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

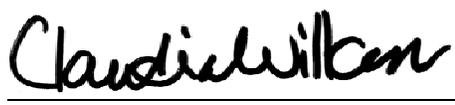
25 10. It is Plaintiff's responsibility to prosecute this case.
26 Plaintiff must keep the Court informed of any change of address and
27 must comply with the Court's orders in a timely fashion.
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11. Extensions of time are not favored, though reasonable extensions will be granted. Any motion for an extension of time must be filed no later than fifteen (15) days prior to the deadline sought to be extended.

IT IS SO ORDERED.

DATED: 3/26/2010



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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

4 THEODORE D. JONES,

5 Plaintiff,

6 v.

7 SF SHERIFF'S DEPT. et al,

8 Defendant.

Case Number: CV08-04172 CW

CERTIFICATE OF SERVICE

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

11 That on March 26, 2010, 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 Theodore Dwayne Jones G18819
16 San Quentin State Prison
17 San Quentin, CA 94964

Dated: March 26, 2010

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