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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

TROYCE T. BRANINBURG,

No. C 08-04562 CW (PR)

Plaintiff,

ORDER OF SERVICE

v.

MONTEREY COUNTY, et al.,

Defendants.

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Plaintiff Troyce T. Braninburg, currently incarcerated at Coalinga State Hospital, filed the present pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging constitutional rights violations. Plaintiff has paid the full filing fee.<sup>1</sup>

The Court conducted an initial screening of the complaint pursuant to 28 U.S.C. § 1915A(a). Plaintiff asserted that jail officials and medical staff at the Monterey County Jail (MCJ) were deliberately indifferent to his medical needs. The following background was taken from the Court's July 1, 2009 Order:

According to the allegations in the complaint, between May 1, 2007 and December 10, 2007, Plaintiff was held as a civil detainee at the Monterey County Jail. (Compl. at 3.) During this time, Plaintiff alleges he did not receive HIV/AIDS medications for four months, and he spent "the entire time in a unsanitary cell with little or no medical attention." (Id.) Plaintiff alleges he "became ill and built up resistance to current . . .

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<sup>1</sup> Plaintiff was granted leave to proceed in forma pauperis (IFP) on November 24, 2008. Plaintiff subsequently filed a motion for reconsideration of the terms of the Court's Order granting Plaintiff IFP status on terms applicable to prisoners. Plaintiff argued that because he was in custody pending an involuntary civil commitment proceeding pursuant to the Sexually Violent Predators Act (SVPA), he was a civil detainee. The Court granted Plaintiff's motion and allowed him to complete a non-prisoner IFP application. (Jul. 1, 2009 Order at 4.) However, Plaintiff had actually paid the full filing fee on February 27, 2009.

1        meds . . . [and] deteriorated medically-mentally." (Id.)  
2        Plaintiff also alleges that he filed numerous grievances,  
3        which were never addressed or returned. FN. (Compl. at  
4        1.)

5        Plaintiff names the "Monterey County District  
6        Attorney's Office" and the "Monterey County Jail Staff as  
7        correctional and medical staff" as defendants in this  
8        case. He seeks monetary damages.

9        FN. Plaintiff contends he has filed administrative appeals  
10       (grievances) on this issue which have never been answered.  
11       It thus appears he has not exhausted his administrative  
12       remedies as required by 42 U.S.C. § 1997e(a). If the  
13       allegations that his appeals have not been answered are  
14       true, however, it may be that administrative remedies are  
15       not "available" within the meaning of the statute. This  
16       is an issue better resolved at a later stage of the case.

17       (July 1, 2009 Order at 1-2 (footnote in original).) The Court  
18       found that Plaintiff's allegations presented a cognizable  
19       deliberate indifference claim. However, the Court determined that  
20       he failed to allege facts identifying which individuals violated  
21       his constitutional rights. (Id. at 7.) Plaintiff named "Monterey  
22       County Jail Staff"; however, he failed to name any specific  
23       defendants. The Court informed Plaintiff that there "is no  
24       respondeat superior liability in Section 1983 cases; therefore,  
25       jail staff cannot be held liable simply because they are in charge  
26       of the jail." (Id.) The Court further noted that a supervisor  
27       generally may be liable under § 1983 only "upon a showing of  
28       (1) personal involvement in the constitutional deprivation or (2) a  
29       sufficient causal connection between the supervisor's wrongful  
30       conduct and the constitutional violation." (Id.) The Court  
31       dismissed Plaintiff's claim with leave to amend, stating:  
32       "Plaintiff may file an amended complaint that names specific  
33       defendants who violated his constitutional rights, or that alleges  
34       supervisory liability under the standards explained above, or  
35       both." (Id.) The Court granted Plaintiff thirty days to file an

1 amended complaint to cure the pleading deficiencies, or to suffer  
2 dismissal of the action.

3 Plaintiff subsequently filed an amended complaint. He names  
4 the following Defendants: Monterey County Sheriff Mike Kanalakis;  
5 MCJ Commander Barrera; and MCJ Director of Medical Services Taylor  
6 Fithian, M.D. He also names the following as Doe Defendants: three  
7 MCJ sergeants, twelve MCJ deputies; and MCJ Isolation Unit  
8 supervisors and deputies.

9 DISCUSSION

10 Plaintiff alleges that Defendant Fithian "was deliberately  
11 indifferent to Plaintiff's medical needs." (Am. Compl. at 3.2.3.)  
12 The Court finds that Plaintiff has stated a cognizable claim  
13 against Defendant Fithian.

14 Plaintiff claims that Defendants Kanalakis and Barrera failed  
15 "to adequately train and supervise [their] subordinate  
16 deputies . . . who were deliberately indifferent to Plaintiff's  
17 medical needs." (Am. Compl. at 3.2.1 and 3.2.2.)<sup>2</sup>

18 "'Supervisory liability is imposed against a supervisory  
19 official in his individual capacity for his own culpable action or  
20 inaction in the training, supervision, or control of his  
21 subordinates, for his acquiescence in the constitutional  
22 deprivations of which the complaint is made, or for conduct that  
23 showed a reckless or callous indifference to the rights of  
24 others.'" Preschooler II v. Davis, 479 F.3d 1175, 1183 (9th Cir.

25  
26  
27 <sup>2</sup> Plaintiff's amended complaint includes two attachments to page  
28 "3." The first of these attachments includes four pages; therefore,  
the Court will refer to these four pages as "3.1.1" through "3.1.4."  
The second of these attachments includes three pages; therefore, the  
Court will refer to these three pages as "3.2.1" through "3.2.3."

1 2007) (citations omitted). Therefore, the Court finds that  
2 Plaintiff has stated a cognizable claim for supervisory liability  
3 against Defendants Kanalakakis and Barrera.

4 In his amended complaint, Plaintiff also presents new claims.  
5 Plaintiff states that a variety of the conditions of his  
6 confinement at the MCJ violated his Fourth and Fourteenth Amendment  
7 rights as a civil detainee under the Sexually Violent Predators Act  
8 (SVPA). Plaintiff alleges that as a civil detainee in custody  
9 pending a Sexually Violent Predator Commitment Proceeding, "he was  
10 entitled to more considerate conditions of confinement in Monterey  
11 County Jail and the actions of the Defendants were punitive in  
12 nature." (Am. Compl. at 3.1.3.) Among his conditions of  
13 confinement, Plaintiff complains of excessive "solitary  
14 confinement," mechanical restraints during transport, inadequate  
15 bedding, routine withholding of meals, and limited access to  
16 telephones and visiting privileges. (Id. at 3-3.1.3.) Plaintiff  
17 also contends that he was "illegally strip search[ed] upon entering  
18 [MCJ]." (Id. at 3.1.4.)

19 There is no per se prohibition on housing sexually violent  
20 predators (SVPs) in facilities, such as county jails, where  
21 criminal detainees or convicts are also housed. In Jones v.  
22 Blanas, the Ninth Circuit declined to hold that SVPs may not,  
23 consistent with the Constitution, be held in jail facilities,  
24 finding instead that the dispositive question when assessing an  
25 SVP's constitutional challenge to his conditions of confinement is  
26 whether those conditions are punitive. 393 F.3d 918, 932 (9th Cir.  
27 2004). A restriction is punitive where it is intended to punish,  
28 or where it is excessive in relation to its non-punitive purpose,

1 or is employed to achieve objectives that could be accomplished in  
2 alternative and less harsh methods. Id. at 933-34 (citations  
3 omitted). The conditions and duration of confinement must "bear  
4 some reasonable relation" to legitimate, non-punitive government  
5 interests." Hydrick v. Hunter, 500 F.3d 978, 997 (9th Cir. 2007)  
6 (internal quotation and citation omitted). Legitimate,  
7 non-punitive government interests include ensuring a detainee's  
8 presence at trial, maintaining jail security, and effective  
9 management of a detention facility. Jones, 393 F.3d at 932.  
10 Further, individuals who have not yet been civilly committed at  
11 trial under the SVPA are entitled to protections at least as great  
12 as those afforded to civilly committed individuals and to  
13 individuals accused but not convicted of a crime. Id. at 931-32.  
14 For such individuals, a presumption of punitive conditions arises  
15 where the individual is detained under conditions identical to,  
16 similar to, or more restrictive than those under which pretrial  
17 criminal detainees are held, or where the individual is detained  
18 under conditions more restrictive than those he or she would face  
19 upon commitment. Id. at 934; cf. Hydrick, 500 F.3d at 997 (after  
20 trial and civil commitment under SVPA, presumption switches, and  
21 conditions of confinement are presumed non-punitive unless proven  
22 otherwise). The government must be afforded an opportunity to  
23 rebut this presumption by showing legitimate, non-punitive  
24 interests justifying the conditions of detainees awaiting SVPA  
25 proceedings, and to show that the restrictions imposed on such  
26 detainees were not excessive in relation to these interests. See  
27 Jones, 393 F.3d at 934-35.

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1 Here, Plaintiff claims that his conditions of confinement were  
2 "worse than those of the overwhelming majority of criminal process  
3 prisoners held in [MCJ]." (Am. Compl. at 3.1.1.) He alleges that  
4 Defendants' actions "were punitive in nature." (Id. at 3.1.3.)  
5 Accordingly, Plaintiff states cognizable Fourth and Fourteenth  
6 Amendment claims against Defendants Kanalakis, Barrera and Fithian.

7 Plaintiff names multiple Doe Defendants in his amended  
8 complaint. The use of Doe Defendants is not favored in the Ninth  
9 Circuit. See Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir.  
10 1980). However, where the identity of alleged defendants cannot be  
11 known prior to the filing of a complaint the plaintiff should be  
12 given an opportunity through discovery to identify them. Id.  
13 Failure to afford the plaintiff such an opportunity is error. See  
14 Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999).  
15 Accordingly, the claims against the Doe Defendants are DISMISSED  
16 from this action without prejudice. Should Plaintiff learn their  
17 identities through discovery or otherwise, he may move to file an  
18 amendment to the complaint to add them as named defendants. See  
19 Brass v. County of Los Angeles, 328 F.3d 1192, 1195-98 (9th Cir.  
20 2003).

21 CONCLUSION

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

- 23 1. Plaintiff states a cognizable claim for deliberate  
24 indifference to his serious medical needs against Defendant  
25 Fithian.
- 26 2. Plaintiff states cognizable supervisory liability claims  
27 against Defendants Kanalakis and Barrera.
- 28 3. Plaintiff states cognizable Fourth and Fourteenth

1 Amendment claims against Defendants Kanalakis, Barrera and Fithian.

2 4. Plaintiff's claims against the Doe Defendants are  
3 DISMISSED from this action without 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 (docket no. 1), the  
7 amended complaint (docket no. 9) and all attachments thereto along  
8 with a copy of this Order to: Monterey County Sheriff Mike  
9 Kanalakis; MCJ Commander Barrera; and MCJ Director of Medical  
10 Services Taylor Fithian, M.D. The Clerk shall also mail copies of  
11 these documents to the Attorney General of the State of California.  
12 In addition, the Clerk shall serve a copy of this Order on  
13 Plaintiff.

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

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

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

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

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

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

27 Rule 56 tells you what you must do in order to  
28 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

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  
the reply brief is due. No hearing will be held on the motion

1 unless the Court so orders at a later date.

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

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

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

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

17 IT IS SO ORDERED.

18 DATED: 1/25/10



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CLAUDIA WILKEN  
United States District Judge

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

4 TROYCE T. BRAININBURG,

5 Plaintiff,

6 v.

7 MONTEREY COUNTY et al,

8 Defendant.

Case Number: CV08-04562 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 January 25, 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 Troyce Tabatha Braninburg 754-2  
16 Coalinga State Hospital  
17 24511 Jayne Avenue  
18 P.O. Box 5003  
19 Coalinga, CA 93210

20 Dated: January 25, 2010

21 Richard W. Wiekling, Clerk  
22 By: Sheilah Cahill, Deputy Clerk  
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