

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

GARY L. FLEMING,

Plaintiff,

v.

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

No. 08-05011 CW

ORDER DENYING
DEFENDANTS'
MOTION TO DISMISS
(Docket No. 24)

Pro se Plaintiff Gary Lee Fleming, a California state prisoner incarcerated at Salinas Valley State Prison (SVSP), files a civil rights action pursuant to 42 U.S.C. § 1983. This Court screened Plaintiff's complaint pursuant to 28 U.S.C. § 1915A and found that, liberally construed, Plaintiff stated a cognizable Eighth Amendment claim for deliberate indifference to his serious medical needs against Defendants M. Muniz, G. A. Neotti, Charles D. Lee, MD, and N. Grannis. The Court dismissed with leave to amend Plaintiff's Eighth Amendment claim against Defendants Arnold Schwarzenegger, L. A. Jones and M. Evans because he had failed to allege any specific conduct that caused him harm. Plaintiff timely filed an amended complaint, in which he adds a claim under the Americans with Disabilities Act (ADA) against Defendant

1 Schwarzenegger.¹ Defendants filed a motion to dismiss based, in
2 part, on Plaintiff's failure to exhaust his claims and, in part, on
3 preemption by two federal class actions. Plaintiff filed an
4 opposition. Defendants filed a reply. Having considered all the
5 papers filed by the parties, the Court DENIES Defendants' motion to
6 dismiss.

7 BACKGROUND

8 Plaintiff suffers from paralysis and is wheelchair-bound.
9 Compl. at 3c;² Pl.'s Exs., Letter from Alexander Johnston, Prison
10 Law Office. Plaintiff alleges his rights under the Eighth and
11 Fourteenth Amendments were violated when Defendants Muniz and Lee
12 placed him in administrative segregation for five months without
13 adequate care and Defendant Neotti did not rectify the situation
14 upon reviewing his appeals. Compl. 3a-3c. In early January, 2008,
15 while Plaintiff was in administrative segregation, he experienced
16 six days without assistance in using the bathroom and without
17 access to the showers. Compl. at 3b.

18 On May 12, 2008, Plaintiff submitted a 602 inmate appeal,
19 alleging that he had been improperly "warehoused in ad-seg" for
20 over five months. Pl.'s Exs., 602 appeal log no. SVSP-D-08-02336,
21 at 3. He appealed this grievance through the Director's Level,

22
23 ¹ Under Federal Rule of Civil Procedure 15(a), Plaintiff could
24 amend his complaint as of right because Defendants had not yet
25 filed a responsive pleading. In his amended complaint, Plaintiff
26 again fails to allege specific conduct regarding his Eighth
27 Amendment claim on the part of Defendants Schwarzenegger, Jones and
28 Evans that harmed Plaintiff. The Eighth Amendment claims against
them are, therefore, dismissed without leave to amend.

² Plaintiff's complaint includes three pages that are labeled
page 3; therefore, the Court has labeled them pages 3a through 3c.

1 where Defendant Grannis, as Chief of the Inmate Appeals Branch,
2 held that "the appellant will be provided appropriate housing, as
3 soon as space becomes available." Pl.'s Exs., Director's Level
4 Appeal Decision at 1.

5 LEGAL STANDARD

6 I. Motion to Dismiss

7 A complaint must contain a "short and plain statement of the
8 claim showing that the pleader is entitled to relief." Fed. R.
9 Civ. P. 8(a). When considering a motion to dismiss under Rule
10 12(b)(6) for failure to state a claim, dismissal is appropriate
11 only when the complaint does not give the defendant fair notice of
12 a legally cognizable claim and the grounds on which it rests. Bell
13 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). In
14 considering whether the complaint is sufficient to state a claim,
15 the court will take all material allegations as true and construe
16 them in the light most favorable to the plaintiff. NL Indus., Inc.
17 v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). However, this
18 principle is inapplicable to legal conclusions; "threadbare
19 recitals of the elements of a cause of action, supported by mere
20 conclusory statements," are not taken as true. Ashcroft v. Iqbal,
21 ___ U.S. ___, 129 S. Ct. 1937, 1949-50 (2009) (citing Twombly, 550
22 U.S. at 555).

23 II. Exhaustion

24 Title 42 U.S.C. § 1997e(a), amended by the Prison Litigation
25 Reform Act of 1995 (PLRA), provides, "No action shall be brought
26 with respect to prison conditions under [42 U.S.C. § 1983], or any
27 other Federal law, by a prisoner confined in any jail, prison, or
28

1 other correctional facility until such administrative remedies as
2 are available are exhausted." Compliance with prison grievance
3 procedures is all that is required by the PLRA to properly exhaust.
4 Jones v. Bock, 549 U.S. 199, 218 (2007).

5 Non-exhaustion under § 1997e(a) is an affirmative defense.
6 Id. at 216 (2007); Wyatt v. Terhune, 315 F.3d 1108, 119-20 (9th
7 Cir.), cert. denied, 540 U.S. 810 (2003). Defendants have the
8 burden of raising and proving the absence of exhaustion, and
9 inmates are not required specifically to plead or demonstrate
10 exhaustion in their complaints. Jones, 549 U.S. at 216.

11 DISCUSSION

12 I. Relief Sought

13 Plaintiff seeks \$20,000 in damages and injunctive relief in
14 the form of a transfer to a medical prison. Compl. at 3c.
15 Defendants submit evidence that on August 12, 2008, Plaintiff was
16 assigned to a cell in SVSP's "B" yard that complies with the ADA,
17 with three assigned ADA workers to assist him. Grannis Decl. ¶ 11,
18 Ex. B. Because Plaintiff's housing needs have been met, his claim
19 for injunctive relief is moot and is therefore dismissed. However,
20 his claim for damages is not dismissed on this ground.

21 II. Class Actions

22 Defendants allege that Plaintiff's claims are barred by two
23 class action suits, Plata v. Schwarzenegger, No. 01-1351 (N.D. Cal.
24 filed April 5, 2001) and Armstrong v. Schwarzenegger, No. 94-2307

1 (N.D. Cal. filed June 29, 1994).³ Plata and Armstrong are two
2 prisoner class actions for injunctive relief addressing the
3 adequacy of the care provided by the California Department of
4 Corrections and Rehabilitation (CDCR) as required under the Eighth
5 Amendment and its compliance with the ADA and § 504 of the
6 Rehabilitation Act (RA). Req. Judicial Notice Ex. A and C.

7 Individual suits for injunctive and equitable relief from
8 alleged unconstitutional prison conditions cannot be brought
9 where there is a pending class action suit involving the same
10 subject matter. McNeil v. Guthrie, 945 F.2d 1163, 1165 (10th Cir.
11 1991); Gillespie v. Crawford, 858 F.2d 1101, 1103 (5th Cir. 1988).
12 But a class action suit seeking only declaratory and injunctive
13 relief does not bar subsequent individual damage claims by class
14 members, even if based on the same events. Hiser v. Franklin, 94
15 F.3d 1287, 1291 (9th Cir. 1996).

16 Plaintiff's claim for injunctive relief has been dismissed
17 because it is moot. Therefore, Defendants' claim of preemption of
18 Plaintiff's claim for injunctive relief is also moot. However,
19 Plaintiff is not barred from pursuing an individual claim for
20 damages by these class actions. Therefore, Defendants' motion to
21 dismiss Plaintiff's claim for damages based on preemption is
22 denied.

23

24

25

26 ³ The Court grants Defendants' Request for Judicial Notice of
27 Exhibits A, B and C of the request, documents filed in Plata and
Armstrong.

28

1 III. ADA Claim

2 In his amended complaint, Plaintiff asserts a cognizable claim
3 under Title II of the ADA against Defendant Schwarzenegger. Citing
4 Vinson v. Thomas, 288 F.3d 1145 (9th Cir. 2002), Defendants move to
5 dismiss this claim based on the ground that claims under the ADA
6 cannot be brought against individuals. Vinson held that a
7 plaintiff cannot bring an action against a state official in his
8 individual capacity for a violation of the ADA. 288 F.3d at 1156.
9 However, Plaintiff may bring his claim against Defendant
10 Schwarzenegger in his official capacity, as Governor of California
11 with oversight of the CDCR. Defendants' motion to dismiss on this
12 ground is, therefore, denied.

13 Compensatory damages are not available under Title II of the
14 ADA absent a showing of discriminatory intent. Ferguson v. City of
15 Phoenix, 157 F.3d 668, 674 (9th Cir. 1998). Discriminatory intent
16 is sufficiently plead with an allegation of deliberate
17 indifference, which requires the knowledge that a harm to a
18 federally protected right is substantially likely, and a failure to
19 act upon that likelihood. Duvall v. County of Kitsap, 260 F.3d
20 1124, 1138-39, (9th Cir. 2001). Plaintiff alleges that the State's
21 actions were deliberately indifferent. Specifically, as discussed
22 further below, Plaintiff alleges that the State knew of his
23 disability and failed to provide him with adequate housing and
24 assistance. Therefore, Defendants' motion to dismiss the ADA claim
25 is denied.

26

27

28

1 IV. Exhaustion

2 Defendants assert that because Plaintiff has failed to exhaust
3 administrative remedies his claims should be dismissed.⁴

4 The State of California provides its inmates the right to
5 appeal administratively "any departmental decision, action,
6 condition or policy perceived by those individuals as adversely
7 affecting their welfare." Cal. Code Regs. tit. 15, § 3084.1(a).
8 In order to exhaust available administrative remedies within this
9 system, a prisoner must proceed through several levels of appeal:
10 (1) informal resolution, (2) formal written appeal on a CDCR 602
11 inmate appeal form, (3) second level appeal to the institution head
12 or designee, and (4) third level appeal to the Director of the
13 CDCR. Id. § 3084.5; Barry v. Ratelle, 985 F. Supp. 1235, 1237
14 (S.D. Cal. 1997).

15 Defendants proffer three appeals submitted by Plaintiff to the
16 CDCR which they argue relate to Plaintiff's claims in the instant
17 action. Only one of these appeals was pursued through all three
18 levels of the prison grievance process; the other two were not
19 pursued once Plaintiff's grievances were redressed. Medina Decl.
20 Ex. A at 22-23. In Plaintiff's appeal SVSP-D-08-02336, filed in
21 May, 2008, he alleged that he was placed in administrative
22 segregation for five months and not given the medical care
23 necessary to treat his disability. Pl.'s Compl. at 8-9. The form
24 asked Plaintiff merely to "Describe Problem" and to state "Action
25

26 ⁴ In deciding a motion to dismiss for failure to exhaust non-
27 judicial remedies, the court may look beyond the pleadings and
28 decide disputed issues of fact. Wyatt, 315 F.3d at 1119-20.

1 Requested," which he did. Pl.'s Compl. at 8. Completion of the
2 form provided by the state is all that the PLRA requires. Butler
3 v. Adams, 397 F.3d 1181, 1183 (9th Cir. 2003). This appeal was
4 pursued through all three administrative levels. Decl. Medina Ex.
5 A at 22.

6 Plaintiff's allegations in appeal SVSP-D-08-02336 are
7 sufficient to put Defendants on notice that he is bringing claims
8 of deliberate indifference to his housing and treatment needs due
9 to his disability. Plaintiff fully exhausted the administrative
10 remedies of the prison system for these claims before seeking
11 relief from this Court.

12 Defendants argue that Defendants Neotti and Grannis must be
13 dismissed for lack of exhaustion because they are not named in
14 appeal SVSP-D-08-02336. However, the exhaustion requirement of the
15 PLRA does not require prisoners to identify specific people by
16 name. Butler, 397 F.3d at 1183. Therefore, Defendants' motion to
17 dismiss the claims against Defendants Neotti and Grannis for
18 failure to exhaust is denied.

19 V. Deliberate Indifference

20 Defendants submit declarations to show that they took
21 affirmative steps to address Plaintiff's housing needs at SVSP and
22 claim that they attempted on numerous occasions to house Plaintiff
23 appropriately, but were unable to do so because of lack of space.⁵

24

25

26 ⁵ Declarations on a motion to dismiss for failure to state a
27 claim are not usually considered. However, even considering
28 Defendants' declarations, the motion to dismiss is denied.

1 Defendants argue that these attempts preclude a finding of
2 deliberate indifference to Plaintiff's serious medical needs.

3 Deliberate indifference to serious medical needs violates the
4 Eighth Amendment's proscription against cruel and unusual
5 punishment. Estelle v. Gamble, 429 U.S. 97, 104 (1976);
6 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled
7 on other grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133,
8 1136 (9th Cir. 1997) (en banc); Jones v. Johnson, 781 F.2d 769, 771
9 (9th Cir. 1986). A determination of "deliberate indifference"
10 involves an examination of two elements: the seriousness of the
11 prisoner's medical need and the nature of the defendant's response
12 to that need. McGuckin, 974 F.2d at 1059. A "serious" medical
13 need exists if the failure to treat a prisoner's condition could
14 result in further significant injury or the "unnecessary and wanton
15 infliction of pain."⁶ Id. (citing Estelle, 429 U.S. at
16 104). A prison official is deliberately indifferent if he knows
17 that a prisoner faces a substantial risk of serious harm and
18 disregards that risk by failing to take reasonable steps to abate
19 it. Farmer v. Brennan, 511 U.S. 835, 837 (1994).

20 Plaintiff alleges he was left "for six days by Captain M.
21 Muniz and Charles D. Lee, CMO, MD, after six days of not know [sic]
22 care in urine and no showers." Pl.'s Compl. at 3a. Plaintiff also
23 alleges that Defendants Muniz and Lee inappropriately chose to
24 house him in administrative segregation at SVSP, and that Dr. Lee
25 "stopped [his] care" while he was housed there. Pl.'s Compl. at

26
27 ⁶ Defendants do not dispute that Plaintiff has a serious
28 medical need.

1 3a-3b. Plaintiff alleges that Defendant Neotti investigated his
2 appeals and did not remedy the situation. Pl.'s Compl. at 3c.

3 Infliction of pain within the meaning of the Eighth Amendment
4 encompasses a "lack of sanitation that is severe or prolonged."
5 Anderson v. County of Kern, 45 F.3d 1310, 1314, as amended, 75 F.3d
6 448 (9th Cir. 1995) (finding a lack of sanitation where prisoner
7 was confined for two days in cell with excrement-encrusted pit
8 toilet and without sink or washing facilities). In Johnson v.
9 Lewis, 217 F.3d 726, 730-31 (9th Cir. 2000), Arizona prisoners
10 deprived of access to toilets and other basic necessities for four
11 days, during which time some inmates urinated or defecated into
12 their clothing, which was not changed for the four-day period, made
13 a showing that the deprivation was sufficiently serious to violate
14 their rights under the Eighth Amendment. Defendants argue they
15 were not deliberately indifferent because they attempted to house
16 Plaintiff appropriately, but were unable to do so because of lack
17 of bed space in areas of the prison that could adequately
18 accommodate him. However, taken as true, Plaintiff's allegations
19 satisfy the requirements of an Eighth Amendment claim against
20 Defendants Muniz, Lee and Neotti. Therefore, Defendants' motion to
21 dismiss the Eighth Amendment claim against Defendants Muniz, Lee
22 and Neotti is denied.

23 Defendants argue that Plaintiff only lists Defendant Grannis'
24 name on the complaint and fails to specify conduct that violated
25 his Eighth Amendment rights. It can be inferred, however, that
26 Plaintiff's claim against Defendant Grannis stems from her review
27 and denial of Plaintiff's appeal. This inference is sufficient to
28

1 state a claim of deliberate indifference. Defendants' motion to
2 dismiss the claim against Defendant Grannis is, therefore, denied.

3 CONCLUSION

4 Plaintiff's claim for injunctive relief is dismissed as
5 moot. Plaintiff's claim for damages for deliberate indifference to
6 his serious medical needs in violation of his Eighth Amendment
7 rights is dismissed against Defendants Evans, Jones and
8 Schwarzenegger. It is not dismissed against Defendants Muniz, Lee,
9 Neotti and Grannis. (Docket No. 24). Defendants' motion to dismiss
10 the ADA claim for damages against Defendant Schwarzenegger in his
11 official capacity is DENIED.

12 Defendants' request for additional time to file a motion for
13 summary judgment is GRANTED. The motion is due twenty-eight days
14 from the date of this order. Plaintiff's opposition is due twenty-
15 eight days thereafter, and Defendants' reply is due fourteen days
16 after that.

17 IT IS SO ORDERED.

18
19 Dated: August 4, 2010



20
21
22
23
24
25
26
27
28

CLAUDIA WILKEN
United States District Judge