

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

3 ARMANDO A. MARROQUIN,

No. C 09-03841 SBA (PR)

4 Plaintiff,

ORDER OF SERVICE

5 v.

6 MIKE EVANS, et al.,

7 Defendants.

8 **INTRODUCTION**

9 Plaintiff is a state prisoner currently being held in Central Arizona Detention Center
10 (CADC), a Corrections Corporation of America facility in Florence, Arizona. He has filed a pro se
11 civil rights action pursuant to 42 U.S.C. § 1983 alleging constitutional violations stemming from his
12 incarceration at Salinas Valley State Prison (SVSP) in 2008. Plaintiff's motion for leave to proceed
13 in forma pauperis has been granted.

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

16 In his complaint, Plaintiff names Defendants SVSP Warden Mike Evans and Correctional
17 Officers Gready, Recio and Montano. Plaintiff seeks monetary damages and injunctive relief.

18 **BACKGROUND**

19 On March 2, 2008, Plaintiff asked Defendant Recio for a "cell move," alleging he "feared for
20 [his] safety." (Attach. to Compl., "Citizens' Complaints Against Personnel.") Plaintiff claims that
21 Defendant Recio failed to help with this "evident serious threat," merely stating that "as soon as he
22 had a cell available he would take [Plaintiff's] situation under consideration." (Id.) Defendant
23 Recio also "failed to investigate the reason why [he] was with [sic] afraid for [his] safety." (Id.)

24 On March 4, 2008, Plaintiff asked an inmate in a neighboring cell, inmate C. Hernandez, to
25 "please call the Officers because it was an emergency." (Id.) Plaintiff alleges that Defendants
26 Gready and Montano were the officers on "the second shift" at that time. ("CDCR 602 Translation
27 Spanish to English.") Inmate Hernandez informed Defendant Gready about Plaintiff's "emergency."
28 However, Defendant Gready "ignored [Plaintiff's] request for help," and "failed to come to

1 [Plaintiff's cell to investigate" (Id.) Plaintiff alleges that his cell mate, inmate G. Rodriguez,
2 then "attacked him, and hurt [him] badly" by kicking Plaintiff's face and chest and throwing a
3 television at Plaintiff. (Attach. to Compl., "Citizens' Complaints Against Personnel"; "CDCR 602
4 Translation Spanish to English.") As a result of the attack, Plaintiff is "still suffering from the
5 injuries that [he] suffered during the attack," including "pain in [his] chest and in [his] head"
6 (Attach. to Compl., "Citizens' Complaints Against Personnel"), "a broken nose," "two loose teeth
7 [sic]" and pain in his jaw and throat when he eats. (Attach. To Compl., "Gov't Claims Form.")
8 Plaintiff further alleges that, as of the date he signed his complaint -- August 8, 2009 -- he had not
9 "received any treatment to alleviate [his] pain." (Attach to Compl., "CDCR 602 Translation Spanish
10 to English.")

11 DISCUSSION

12 **I. Standard of Review**

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

19 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:

- 20 (1) that a right secured by the Constitution or laws of the United States was violated, and
21 (2) that the alleged violation was committed by a person acting under the color of state law. West v.
22 Atkins, 487 U.S. 42, 48 (1988).

23 **II. Legal Claims**

24 **A. Injunctive Relief**

25 Plaintiff seeks injunctive relief. The jurisdiction of the federal courts depends on the
26 existence of a "case or controversy" under Article III of the Constitution. Pub. Util. Comm'n of
27 State of Cal. v. FERC, 100 F.3d 1451, 1458 (9th Cir. 1996). A claim is considered moot if it has
28 lost its character as a present, live controversy and if no effective relief can be granted; where the

1 question sought to be adjudicated has been mooted by developments subsequent to filing of the
2 complaint, no justiciable controversy is presented. Flast v. Cohen, 392 U.S. 83, 95 (1968). Where
3 injunctive relief is requested, questions of mootness are determined in light of the present
4 circumstances. See Mitchell v. Dupnik, 75 F.3d 517, 528 (9th Cir. 1996). When an inmate has been
5 transferred to another prison and there is no reasonable expectation nor demonstrated probability
6 that he will again be subjected to the prison conditions from which he seeks injunctive relief, the
7 claim for injunctive relief should be dismissed as moot. See Dilley v. Gunn, 64 F.3d 1365, 1368-69
8 (9th Cir. 1995).

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

11 **B. Deliberate Indifference to Safety**

12 The Eighth Amendment's prohibition of cruel and unusual punishment requires that prison
13 officials take reasonable measures for the safety of inmates. See Farmer v. Brennan, 511 U.S. 825,
14 834 (1994). In particular, officials have a duty to protect inmates from violence at the hands of
15 other inmates. See id. at 833. A prison official violates the Eighth Amendment only when two
16 requirements are met: (1) the deprivation alleged is, objectively, sufficiently serious, and (2) the
17 official is, subjectively, deliberately indifferent to the inmate's safety. See id. at 834.

18 Plaintiff alleges that Defendant Recio "failed to help" with his "evident serious threat," and
19 Defendant Gready ignored [Plaintiff's] request for help." ("Citizens' Complaints Against
20 Personnel.") Liberally construed, Plaintiff's complaint states a cognizable deliberate indifference to
21 safety claim against Defendants Gready and Recio.

22 However, Plaintiff does not allege that Defendant Montano was aware of Plaintiff's
23 emergency. Liability may be imposed on an individual defendant under § 1983 if the plaintiff can
24 show that the defendant proximately caused the deprivation of a federally protected right. See Leer
25 v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988); Harris v. City of Roseburg, 664 F.2d 1121, 1125 (9th
26 Cir. 1981). A person deprives another of a constitutional right within the meaning of § 1983 if he
27 does an affirmative act, participates in another's affirmative act or omits to perform an act which he
28 is legally required to do, that causes the deprivation of which the plaintiff complains. See Leer, 844

1 F.2d at 633. The inquiry into causation must be individualized and focus on the duties and
2 responsibilities of each individual defendant whose acts or omissions are alleged to have caused a
3 constitutional deprivation. See id. Sweeping conclusory allegations will not suffice; the plaintiff
4 must instead "set forth specific facts as to each individual defendant's" deprivation of protected
5 rights. See id. at 634.

6 Accordingly, the Court DISMISSES Plaintiff's deliberate indifference to safety claim against
7 Defendant Montano with leave to amend. Plaintiff may reassert this claim against Defendant
8 Montano in an amendment to the complaint if he can, in good faith, allege facts demonstrating that
9 Defendant Montano himself was "subjectively, deliberately indifferent to the inmate's safety."
10 Farmer, 511 U.S. at 834.

11 **C. Deliberate Indifference to Medical Needs**

12 Deliberate indifference to serious medical needs violates the Eighth Amendment's
13 proscription against cruel and unusual punishment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976);
14 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, WMX
15 Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc); Jones v. Johnson, 781
16 F.2d 769, 771 (9th Cir. 1986). A determination of "deliberate indifference" involves an examination
17 of two elements: the seriousness of the prisoner's medical need and the nature of the defendant's
18 response to that need. See McGuckin, 974 F.2d at 1059. A "serious" medical need exists if the
19 failure to treat a prisoner's condition could result in further significant injury or the "unnecessary
20 and wanton infliction of pain." Id. (citing Estelle v. Gamble, 429 U.S. at 104). A prison official is
21 deliberately indifferent if he or she knows that a prisoner faces a substantial risk of serious harm and
22 disregards that risk by failing to take reasonable steps to abate it. Farmer v. Brennan, 511 U.S. 825,
23 837 (1994).

24 Plaintiff states that he has not "received medical treatment to alleviate his pain" since the
25 alleged attack by his cell mate, G. Rodriguez. ("CDCR 602 Translation Spanish to English.")
26 However, Plaintiff has not linked Defendants Gready, Recio and Montano to his allegations
27 regarding deliberate indifference to medical needs. Furthermore, Plaintiff has now been transferred
28 to CADC. Therefore any claims he may have against prison officials at CADC cannot be brought in

1 this district. Instead, Plaintiff may file a complaint in the United States District Court for the
2 District of Arizona relating to any constitutional violations stemming from his incarceration at
3 CADAC.

4 Accordingly, the Court DISMISSES with leave to amend Plaintiff's deliberate indifference
5 to medical needs claim against Defendants Gready, Recio and Montano. Plaintiff may reassert this
6 claim in an amendment to the complaint if he can, in good faith, allege facts demonstrating that
7 Defendants knew Plaintiff faced a substantial risk of serious harm, yet disregarded that risk by
8 failing to take reasonable steps to abate it. Farmer v. Brennan, 511 U.S. at 837.

9 **D. Supervisory Liability Claim**

10 A supervisor may be liable under § 1983 for deliberate indifference upon a showing of
11 (1) personal involvement in the constitutional deprivation or (2) a sufficient causal connection
12 between the supervisor's wrongful conduct and the constitutional violation. Redman v. County of
13 San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc) (citation omitted). Thus, a supervisor is
14 generally "only liable for constitutional violations of his subordinates if the supervisor participated
15 in or directed the violations, or knew of the violations and failed to act to prevent them." Taylor v.
16 List, 880 F.2d 1040, 1045 (9th Cir. 1989). However, a supervisor cannot be held liable in the
17 absence of an underlying constitutional violation. Jackson v. City of Bremerton, 268 F.3d 646, 654
18 (9th Cir. 2001).

19 In his complaint, Plaintiff names M. Evans, the warden at SVSP, as a Defendant. Plaintiff
20 alleges that Defendant Evans violated his "duties to ensure adequate training, supervision and
21 direction of subordinate employees." (Compl. at 3.) However, Plaintiff does not specifically allege
22 that Defendant Evans either "participated in or directed the violations, or knew of the violations and
23 failed to act to prevent them." Taylor, 880 F.2d at 1045. Accordingly, the Court DISMISSES with
24 leave to amend Plaintiff's claims for deliberate indifference to safety and serious medical needs
25 against Defendant Evans. Plaintiff may reassert these claims against Defendant Evans in an
26 amendment to the complaint if he can, in good faith, allege facts demonstrating a "sufficient causal
27 connection" between the Eighth Amendment violations and Defendant Evan's "wrongful conduct."
28 Redman, 942 F.2d at 1446.

1 instructed above. have not been linked to Plaintiff's alleged constitutional violations. Accordingly,
2 Plaintiff's claims against Defendants Montano and Evans are DISMISSED with leave to amend. If
3 Plaintiff intends to pursue his claims against these Defendants, he shall file an amendment to the
4 complaint containing such allegations, as instructed above.

5 5. Within **thirty (30) days** of the date of this Order Plaintiff may file amended claims
6 against Defendants Montano and Evans as set forth above in Sections II(B) and (D) of this Order,
7 respectively. And Plaintiff may also file an amended claim of deliberate indifference to serious
8 medical needs as set forth above in Section II(C) of this Order. (Plaintiff shall resubmit only those
9 claims and not the entire complaint.) The amended claims must be submitted on an amendment to
10 the complaint. It must include the caption as well as the civil case number of this action (C 09-3841
11 SBA (PR)) and the words AMENDMENT TO THE COMPLAINT on the first page. Failure to do
12 so will result in the dismissal without prejudice of any claim against Defendants Montano and Evans
13 as well as Plaintiff's claim of deliberate indifference to serious medical needs.

14 6. The Court will exercise supplemental jurisdiction over Plaintiff's state law claims of
15 negligence, medical malpractice and IIED.

16 7. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of
17 Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint and
18 all attachments thereto (docket no. 1) and a copy of this Order to **SVSP Correctional Officer**
19 **Gready at SVSP and to former SVSP Correctional Officer Recio at Avenal State Prison.** The
20 Clerk of the Court shall also mail a copy of the complaint and a copy of this Order to the State
21 Attorney General's Office in San Francisco. Additionally, the Clerk shall mail a copy of this Order
22 to Plaintiff.

23 8. Defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure requires
24 them to cooperate in saving unnecessary costs of service of the summons and complaint. Pursuant
25 to Rule 4, if Defendants, after being notified of this action and asked by the Court, on behalf of
26 Plaintiff, to waive service of the summons, fail to do so, they will be required to bear the cost of
27 such service unless good cause be shown for their failure to sign and return the waiver form. If
28 service is waived, this action will proceed as if Defendants have been served on the date that the

1 waiver is filed, except that pursuant to Rule 12(a)(1)(B), Defendants will not be required to serve
2 and file an answer before **sixty (60) days** from the date on which the request for waiver was sent.
3 (This allows a longer time to respond than would be required if formal service of summons is
4 necessary.) Defendants are asked to read the statement set forth at the foot of the waiver form that
5 more completely describes the duties of the parties with regard to waiver of service of the summons.
6 If service is waived after the date provided in the Notice but before Defendants have been
7 personally served, the Answer shall be due **sixty (60) days** from the date on which the request for
8 waiver was sent or **twenty (20) days** from the date the waiver form is filed, whichever is later.

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

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

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

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

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

1 against you. If summary judgment is granted [in favor of the defendants], your case
2 will be dismissed and there will be no trial.

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

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

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

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

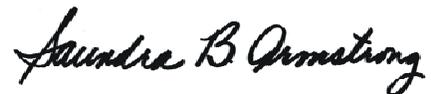
17 10. Discovery may be taken in this action in accordance with the Federal Rules of Civil
18 Procedure. Leave of the Court pursuant to Rule 30(a)(2) is hereby granted to Defendant to depose
19 Plaintiff and any other necessary witnesses confined in prison.

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

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

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

28 IT IS SO ORDERED.



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DATED: 5/24/11

SAUNDRA BROWN ARMSTRONG
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ARMANDO A. MARROQUIN et al,
Plaintiff,

Case Number: CV09-03841 SBA

CERTIFICATE OF SERVICE

v.

MIKE EVANS et al,
Defendant.

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

That on May 25, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Armundo A. Marroquin T-86698
CCA-FCC
P.O. Box 6900
Florence, AZ 85132

Dated: May 25, 2011

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk