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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROGER LEE WALKER,
Plaintiff,
v.
GREGORY J. AHERN,
Defendant.

Case No. [16-cv-04988-YGR](#) (PR)

ORDER OF PARTIAL DISMISSAL AND SERVICE

I. INTRODUCTION

Plaintiff, who is currently in custody at the Coalinga State Hospital, is a civil detainee under California’s “Sexually Violent Predators Act,” California Welfare & Institutions Code § 6600 et seq. In 2016, Plaintiff was housed at the Santa Rita Jail for a “period of several months while awaiting court proceedings.” Dkt. 1 at 3. Plaintiff originally filed this *pro se* civil rights complaint alleging that his constitutional rights were violated by former Sheriff Glenn E. Dyer¹ and several unnamed deputies who worked at “Unit 3” at Santa Rita Jail (“SRJ”) during his incarceration there on unspecified dates in 2016. Plaintiff claims that he was “placed in administrative segregation each time and treated harshly and punitively for no other reason than being a civil detainee under the 6600 law.” *Id.* On January 11, 2017, the Court dismissed this action with leave to amend to correct certain deficiencies. Dkt. 5.

Before the Court is Plaintiff’s amended complaint, in which he seeks injunctive relief and monetary damages. Dkt. 7. The Court now reviews the claims raised in the amended complaint.

¹ The Court notes that the former Sheriff Dyer passed away in 1999, and the current Alameda County Sheriff is Gregory J. Ahern.

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II. DISCUSSION

A. Injunctive Relief Claims

As mentioned above, Plaintiff seeks both injunctive relief and monetary damages in his amended complaint. Dkt. 7 at 11. The jurisdiction of the federal courts depends on the existence of a “case or controversy” under Article III of the Constitution. *PUC v. FERC*, 100 F.3d 1451, 1458 (9th Cir. 1996). A claim is considered moot if it has lost its character as a present, live controversy, and if no effective relief can be granted: “Where the question sought to be adjudicated has been mooted by developments subsequent to filing of the complaint, no justiciable controversy is presented.” *Flast v. Cohen*, 392 U.S. 83, 95 (1968). Where injunctive relief is involved, questions of mootness are determined in light of the present circumstances. *See Mitchell v. Dupnik*, 75 F.3d 517, 528 (9th Cir. 1996).

When an inmate has been transferred to another prison and there is no reasonable expectation or demonstrated probability that he again will be subjected to the prison conditions from which he seeks injunctive relief, the claim for injunctive relief should be dismissed as moot. *See Dilley v. Gunn*, 64 F.3d 1365, 1368-69 (9th Cir. 1995). A claim that the inmate might be re-transferred to the prison where the injury occurred is too speculative to overcome mootness. *Id.*

Plaintiff seeks injunctive relief to remedy his alleged injuries stemming from constitutional violations during his previous incarceration at SRJ. However, Plaintiff has been transferred to Coalinga State Hospital. Because Plaintiff is no longer incarcerated at SRJ, his claims for injunctive relief based on his confinement at SRJ are DISMISSED as moot. The Court proceeds to review Plaintiff’s remaining claims for monetary damages.

B. Claims for Monetary Damages

1. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.*

1 § 1915A(b). *Pro se* pleadings must be liberally construed, however. *Balistreri v. Pacifica Police*
2 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

3 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the
4 claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the
5 statement need only ‘give the defendant fair notice of what the . . . claim is and the grounds upon
6 which it rests.’” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in
7 order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s
8 obligation to provide the grounds of his ‘entitle[ment] to relief’ requires more than labels and
9 conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . .
10 Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell*
11 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must
12 proffer “enough facts to state a claim for relief that is plausible on its face.” *Id.* at 570.

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

17 **2. Legal Claims**

18 As mentioned above, Plaintiff is a civil detainee who is no longer housed at SRJ. He
19 complains of constitutional violations that stem from his incarceration at SRJ in 2016. Plaintiff
20 has filed an amended complaint in an attempt to correct the deficiencies of his complaint. Plaintiff
21 has named Defendant Sheriff Gregory J. Ahern and Doe Defendants 1- 20, and alleges Eighth
22 Amendment claims against them.

23 The Constitution does not mandate comfortable prisons, but neither does it permit
24 inhumane ones. *See Farmer v. Brennan*, 511 U.S. 825, 832 (1994). The treatment a prisoner
25 receives in prison and the conditions under which he is confined are subject to scrutiny under the
26 Eighth Amendment. *See Helling v. McKinney*, 509 U.S. 25, 31 (1993).

27 In determining whether a deprivation of a basic necessity is sufficiently serious to satisfy
28 the objective component of an Eighth Amendment claim, a court must consider the circumstances,

1 nature, and duration of the deprivation. The more basic the need, the shorter the time it can be
2 withheld. *See Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000). Substantial deprivations of
3 shelter, food, drinking water or sanitation for four days, for example, are sufficiently serious to
4 satisfy the objective component of an Eighth Amendment claim. *See id.* at 732-73. The requisite
5 state of mind to establish an Eighth Amendment violation depends on the nature of the claim. In
6 prison-conditions cases, the necessary state of mind is one of “deliberate indifference.” *See, e.g.,*
7 *Farmer*, 511 U.S. at 834 (inmate safety); *Helling*, 509 U.S. at 32-33 (inmate health); *Estelle v.*
8 *Gamble*, 429 U.S. 97, 104 (1976) (inmate health).

9 Neither negligence nor gross negligence will constitute deliberate indifference. *See*
10 *Farmer*, 511 U.S. at 835-36 & n.4; *see also Estelle*, 429 U.S. at 106 (establishing that deliberate
11 indifference requires more than negligence). A prison official cannot be held liable under the
12 Eighth Amendment for denying an inmate humane conditions of confinement unless the standard
13 for criminal recklessness is met, i.e., the official knows of and disregards an excessive risk to
14 inmate health or safety. *See Farmer*, 511 U.S. at 837. The official must both be aware of facts
15 from which the inference could be drawn that a substantial risk of serious harm exists, and he must
16 also draw the inference. *See id.* An Eighth Amendment claimant need not show, however, that a
17 prison official acted or failed to act believing that harm actually would befall an inmate; it is
18 enough that the official acted or failed to act despite his knowledge of a substantial risk of serious
19 harm. *See id.* at 842. This is a question of fact. *See Farmer*, 511 U.S. at 842. A heightened
20 pleading standard applies to the subjective prong of Eighth Amendment claims: the plaintiff must
21 make nonconclusory allegations supporting an inference of unlawful intent. *Alfrey v. United*
22 *States*, 276 F.3d 557, 567-68 (9th Cir. 2002) (applying standard to *Bivens* Eighth Amendment
claim).

23 Although the Eighth Amendment protects against cruel and unusual punishment, this does
24 not mean that federal courts can or should interfere whenever prisoners are inconvenienced or
25 suffer de minimis injuries. *See, e.g., Holloway v. Gunnell*, 685 F.2d 150 (5th Cir. 1985) (no claim
26 stated where prisoner forced to spend two days in hot dirty cell with no water); *Evans v. Fogg*, 466
27 F. Supp. 949 (S.D.N.Y. 1979) (no claim stated by prisoner confined for twenty-four hours in
28 refuse strewn cell and for two days in flooded cell). Federal courts instead should avoid

1 enmeshing themselves in the minutiae of prison operations in the name of the Eighth Amendment.
2 *See Wright v. Rushen*, 642 F.2d 1129, 1132 (9th Cir. 1981).

3 Here, Plaintiff alleges that on January 29, 2016, he arrived at SRJ, and that Defendant
4 Ahern was “The Administrator and the Final Policy Maker of said jails he failed to protect and
5 provide for Plaintiff’s needs causing Plaintiff to be subject to conditions of confinement which
6 constitutes deliberate indifference.” Dkt. 7 at 4. Specifically, Plaintiff claims that Defendant
7 Ahern was “charged with federal and state law and state Penal Codes to ensure that Plaintiff, a
8 civil detainee . . . was provided clean linen and clothing; daily dayroom use; showers no less than
9 3 times per week; enough hygiene materials to last until the next issue is passed out; recreational
10 time; and use of the telephone no less times than those inmates detained for criminal cause.” *Id*
11 Plaintiff claims that he was placed in Administrative Segregation and “effectively denied each of
12 these minimum standards of living.” *Id*. He has also named various Doe Defendants (“John Does
13 1-5, 7, 8” and “Jane Doe 6”), who are mostly SRJ correctional officers, as those responsible for
14 preventing Plaintiff from attaining the aforementioned “minimum standard of living.” *Id*. at 5-10.
15 Finally, Plaintiff names “John Does 9-20” who were “also assigned to work [at] Building 8, POD-
16 C . . . [and] were directly involved in the day to day care and custody of Plaintiff and their acts
17 and/or omissions contributed to the rights violations that Plaintiff was subjected to and made no
18 effort to report those violations or help Plaintiff get his needs met.” *Id*. at 10.

19 Liberally construed, Plaintiff states a COGNIZABLE Eighth Amendment claim against
20 Defendant Ahern, “John Does 1-5, 7, 8” and “Jane Doe 6.” Although the use of “John Doe” to
21 identify a defendant is not favored in the Ninth Circuit, *see Gillespie v. Civiletti*, 629 F.2d 637,
22 642 (9th Cir. 1980); *Wiltsie v. Cal. Dep’t of Corrections*, 406 F.2d 515, 518 (9th Cir. 1968),
23 situations may arise where the identity of alleged defendants cannot be known prior to the filing of
24 a complaint. In such circumstances, the plaintiff should be given an opportunity through
25 discovery to identify the unknown defendants, unless it is clear that discovery would not uncover
26 their identities or that the complaint should be dismissed on other grounds. *See Gillespie*, 629
27 F.2d at 642; *Velasquez v. Senko*, 643 F. Supp. 1172, 1180 (N.D. Cal. 1986). Plaintiff must provide
28 to the Court the names of Defendants “John Does 1-5, 7, 8” and “Jane Doe 6” by the date
scheduled in this Order for any served Defendant to file a dispositive motion. Failure to do so will

1 result in dismissal of Defendants “John Does 1-5, 7, 8” and “Jane Doe 6” without prejudice to
2 Plaintiff filing a new action against them.

3 As to Plaintiff’s claim against “John Does 9-20,” the Court construes this claim as one
4 against all jail employees who were “also assigned to work [at] Building 8, POD-C.” *Id.* at 10. A
5 defendant cannot be held liable simply based on his membership in a group without showing his
6 individual participation in unlawful conduct. *Chuman v. Wright*, 76 F.3d 292, 294 (9th Cir. 1996).
7 Either personal involvement or integral participation of each defendant in the alleged
8 constitutional violation is required before liability may be imposed. *See Jones v. Williams*, 297
9 F.3d 930, 936 (9th Cir. 2002). Plaintiff cannot name “John Does 9-20” as Defendants without
10 naming and linking specifically each jail employee to his claim of deliberate indifference.
11 Accordingly, the Defendant group of “John Does 9-20” (as opposed to individually named jail
12 employees) is DISMISSED.

13 **III. CONCLUSION**

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

- 15 1. Plaintiff’s claims for injunctive relief based on his confinement at SRJ are
16 DISMISSED as moot.
- 17 2. Plaintiff’s new allegations in his amended complaint state a claim of deliberate
18 indifference against Defendant Ahern as well as “John Does 1-5, 7, 8” and “Jane Doe 6.” Plaintiff
19 must provide to the Court the names of Defendants “John Does 1-5, 7, 8” and “Jane Doe 6” by the
20 dispositive motion due date indicated below. Failure to do so will result in dismissal of
21 Defendants “John Does 1-5, 7, 8” and “Jane Doe 6” without prejudice to Plaintiff filing a new
22 action against them.
- 23 3. The Defendant group “John Does 9-20,” which has been construed as a claim
24 against all jail employees who were “also assigned to work [at] Building 8, POD-C,” is
25 DISMISSED from the complaint with prejudice.
- 26 4. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of
27 Service of Summons, two copies of the Waiver of Service of Summons, a copy of the amended
28 complaint and all attachments thereto (dkt. 7), and a copy of this Order to **Defendant Sheriff**

1 **Gregory J. Ahern at SRJ.**

2 The Clerk shall also mail a copy of the amended complaint and a copy of this Order to the
3 Alameda County Counsel's Office. Additionally, the Clerk shall mail a copy of this Order to
4 Plaintiff.

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

20 6. Defendant shall answer the complaint in accordance with the Federal Rules of Civil
21 Procedure. The following briefing schedule shall govern dispositive motions in this action:

22 a. No later than **sixty (60) days** from the date the answer is due, Defendant
23 shall file a motion for summary judgment or other dispositive motion. The motion must be
24 supported by adequate factual documentation, must conform in all respects to Federal Rule of
25 Civil Procedure 56, and must include as exhibits all records and incident reports stemming from
26 the events at issue. A motion for summary judgment also must be accompanied by a *Rand*² notice
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28 ² *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998).

1 so that Plaintiff will have fair, timely and adequate notice of what is required of him in order to
2 oppose the motion. *Woods v. Carey*, 684 F.3d 934, 935 (9th Cir. 2012) (notice requirement set out
3 in *Rand* must be served concurrently with motion for summary judgment). A motion to dismiss
4 for failure to exhaust available administrative remedies must be accompanied by a similar notice.
5 However, the court notes that under the new law of the circuit, in the rare event that a failure to
6 exhaust is clear on the face of the complaint, Defendant may move for dismissal under Rule
7 12(b)(6) as opposed to the previous practice of moving under an unenumerated Rule 12(b) motion.
8 *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (en banc) (overruling *Wyatt v. Terhune*, 315
9 F.3d 1108, 1119 (9th Cir. 2003), which held that failure to exhaust available administrative
10 remedies under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), should be raised by a
11 defendant as an unenumerated Rule 12(b) motion). Otherwise if a failure to exhaust is not clear on
12 the face of the complaint, Defendant must produce evidence proving failure to exhaust in a motion
13 for summary judgment under Rule 56. *Id.* If undisputed evidence viewed in the light most
14 favorable to Plaintiff shows a failure to exhaust, Defendant is entitled to summary judgment under
15 Rule 56. *Id.* But if material facts are disputed, summary judgment should be denied and the
16 district judge rather than a jury should determine the facts in a preliminary proceeding. *Id.* at
17 1168.

18 If Defendant is of the opinion that this case cannot be resolved by summary judgment,
19 Defendant shall so inform the court prior to the date the summary judgment motion is due. All
20 papers filed with the court shall be promptly served on Plaintiff.

21 b. Plaintiff's opposition to the dispositive motion shall be filed with the court
22 and served on Defendant no later than **twenty-eight (28) days** after the date on which Defendant's
23 motion is filed.

24 c. Plaintiff is advised that a motion for summary judgment under Rule 56 of
25 the Federal Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you
26 must do in order to oppose a motion for summary judgment. Generally, summary judgment must
27 be granted when there is no genuine issue of material fact—that is, if there is no real dispute about
28 any fact that would affect the result of your case, the party who asked for summary judgment is

1 entitled to judgment as a matter of law, which will end your case. When a party you are suing
2 makes a motion for summary judgment that is properly supported by declarations (or other sworn
3 testimony), you cannot simply rely on what your complaint says. Instead, you must set out
4 specific facts in declarations, depositions, answers to interrogatories, or authenticated documents,
5 as provided in Rule 56(e), that contradicts the facts shown in the defendant’s declarations and
6 documents and show that there is a genuine issue of material fact for trial. If you do not submit
7 your own evidence in opposition, summary judgment, if appropriate, may be entered against you.
8 If summary judgment is granted, your case will be dismissed and there will be no trial. *Rand*, 154
9 F.3d at 962-63.

10 Plaintiff also is advised that—in the rare event that Defendant argues that the failure to
11 exhaust is clear on the face of the complaint—a motion to dismiss for failure to exhaust available
12 administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your case, albeit without
13 prejudice. To avoid dismissal, you have the right to present any evidence to show that you did
14 exhaust your available administrative remedies before coming to federal court. Such evidence
15 may include: (1) declarations, which are statements signed under penalty of perjury by you or
16 others who have personal knowledge of relevant matters; (2) authenticated documents—
17 documents accompanied by a declaration showing where they came from and why they are
18 authentic, or other sworn papers such as answers to interrogatories or depositions; (3) statements
19 in your complaint insofar as they were made under penalty of perjury and they show that you have
20 personal knowledge of the matters state therein. As mentioned above, in considering a motion to
21 dismiss for failure to exhaust under Rule 12(b)(6) or failure to exhaust in a summary judgment
22 motion under Rule 56, the district judge may hold a preliminary proceeding and decide disputed
23 issues of fact with regard to this portion of the case. *Albino*, 747 F.3d at 1168.

24 (The notices above do not excuse Defendant’s obligation to serve similar notices again
25 concurrently with motions to dismiss for failure to exhaust available administrative remedies and
26 motions for summary judgment. *Woods*, 684 F.3d at 935.)

27 d. Defendant shall file a reply brief no later than **fourteen (14) days** after the
28 date Plaintiff’s opposition is filed.

1 e. The motion shall be deemed submitted as of the date the reply brief is due.
2 No hearing will be held on the motion unless the court so orders at a later date.

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


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

9 9. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the court
10 informed of any change of address and must comply with the court's orders in a timely fashion.
11 Pursuant to Northern District Local Rule 3-11 a party proceeding *pro se* whose address changes
12 while an action is pending must promptly file a notice of change of address specifying the new
13 address. *See* L.R. 3-11(a). The court may dismiss without prejudice a complaint when: (1) mail
14 directed to the *pro se* party by the court has been returned to the court as not deliverable, and
15 (2) the court fails to receive within sixty days of this return a written communication from the *pro*
16 *se* party indicating a current address. *See* L.R. 3-11(b).

17 10. Upon a showing of good cause, requests for a reasonable extension of time will be
18 granted provided they are filed on or before the deadline they seek to extend.

19 IT IS SO ORDERED.

20 Dated: July 21, 2017

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22 YVONNE GONZALEZ ROGERS
23 United States District Judge
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