

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WALTER SHANE LANGSTON,  
Plaintiff,  
v.  
CORRECTIONAL SERGEANT CORONA,  
Defendant.

Case No. [16-cv-07140-YGR](#) (PR)

**ORDER OF PARTIAL DISMISSAL AND SERVICE**

**I. INTRODUCTION**

Plaintiff, a state prisoner who is currently incarcerated at California State Prison-Corcoran (“CSP-COR”), has filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983, stemming from constitutional violations occurring at the Correctional Training Facility (“CTF”),<sup>1</sup> where he previously was incarcerated.<sup>2</sup>

His motion for leave to proceed *in forma pauperis* will be granted in a separate written Order.

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

In his complaint, Plaintiff sues Defendant CTF Correctional Sergeant Corona, both individually and in his official capacity. Plaintiff seeks monetary damages and injunctive relief.

**II. DISCUSSION**

**A. Injunctive Relief Claims**

As mentioned above, Plaintiff seeks both injunctive relief and monetary damages. The

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<sup>1</sup> The Court notes that Plaintiff incorrectly refers to CTF as the “*California* Training Facility.” *See* Dkt. 1 at 2, 4-10.

<sup>2</sup> This matter originally was filed in the United States District Court for the Eastern District of California, but it was later transferred to this district. Dkt. 7. The Court further notes that Plaintiff has indicated that, while a prisoner, he filed four previous lawsuits against other named defendants in the Eastern District. Dkt. 1 at 1-2. He claims that these previous suits were dismissed without prejudice. *Id.* at 2.

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

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

13 Plaintiff seeks injunctive relief to remedy his alleged injuries stemming from constitutional  
14 violations during his previous incarceration at CTF. However, Plaintiff has been transferred to  
15 CSP-COR. Because Plaintiff is no longer incarcerated at CTF, his claims for injunctive relief  
16 based on his confinement at CTF are DISMISSED as moot. The Court proceeds to review  
17 Plaintiff’s remaining claims for monetary damages.

18 **B. Claims for Monetary Damages**

19 **1. Standard of Review**

20 A federal court must conduct a preliminary screening in any case in which a prisoner seeks  
21 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
22 § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims  
23 that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek  
24 monetary relief from a defendant who is immune from such relief. *Id.* § 1915A(b)(1), (2). *Pro se*  
25 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th  
26 Cir. 1988).

27 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements,  
28 namely that: (1) a right secured by the Constitution or laws of the United States was violated, and

1 (2) the alleged violation was committed by a person acting under the color of state law. *West v.*  
2 *Atkins*, 487 U.S. 42, 48 (1988).

3 **2. Legal Claims**

4 **a. Official Capacity Claim**

5 Plaintiff has sued Defendant Corona individually and in his official capacity seeking  
6 monetary relief. Dkt. 1 at 4. “[A]n official-capacity suit is, in all respects other than name, to be  
7 treated as a suit against the entity.” *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). Unless  
8 waived, the Eleventh Amendment bars a federal court award of damages against a state, state  
9 agency, or state official sued in an official capacity. *Id.* at 169. As there has been no waiver here,  
10 Plaintiff’s claim against Defendant Corona in his official capacity for monetary damages is  
11 DISMISSED with prejudice.

12 **b. Claim of Deliberate Indifference to Safety**

13 A prison official is deliberately indifferent if he or she knows that a prisoner faces a  
14 substantial risk of serious harm and disregards that risk by failing to take reasonable steps to abate  
15 it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The test for deliberate indifference consists of  
16 two parts, an objective prong and a subjective prong. *Clement v. Gomez*, 298 F.3d 898, 904 (9th  
17 Cir. 2002). First, the alleged deprivation must be, in objective terms, “sufficiently serious . . . .”  
18 *Farmer*, 511 U.S. at 834. Second, the subjective component requires that the prison official must  
19 “know [] of and disregard[] an excessive risk to inmate health or safety . . . .” *Id.* at 837.

20 Plaintiff arrived at CTF on January 7, 2016 and was housed in the “X-Wing,” which is a  
21 “known Blood Gang Wing.” Dkt. 1 at 4-5. He claims that “upon [his] arrival, [he] requested to be  
22 rehoused due to enemy concerns . . . .” *Id.* On January 26, 2016, Plaintiff claims that he again  
23 alerted prison officials “that he had enemy concerns, and that his life was [in] danger . . . .” *Id.* at  
24 5. Plaintiff notes that he previously had been classified as a “rapist, due to [an] arrest and  
25 conviction date 9-19-2003, by the Institutional Classification Committee . . . .” *Id.* at 5. On  
26 February 2 and 3, 2016, Plaintiff was assaulted by “known Blood Gang members,” which Plaintiff  
27 claims was the result of his “labeling as a rapist.” *Id.* Plaintiff claims that as a result of the  
28 assaults, he suffered injuries to his “face, nose, jaw, ear, head [and] left eye.” *Id.* at 7. Plaintiff

1 claims that he “is in constant pain [un]til the present day,” that his left eye has blurred vision,  
2 and that he “live[s] in fear of not being protected” in prison. *Id.*

3 Plaintiff alleges that Defendant Corona acted with deliberate indifference to his safety  
4 needs by: (1) willfully housing Plaintiff in the “X-Wing”; (2) exposing him to the risk of being  
5 assaulted by “known Blood Gang members”; and (3) refusing to house Plaintiff in protective  
6 custody, despite knowledge of Plaintiff’s classification and “enemy concerns.” *Id.* at 4-10.  
7 Plaintiff claims that such deliberate indifference caused him to be injured during two separate  
8 incidents on February 2 and 3, 2016, wherein he was assaulted by “known Blood Gang members.”  
9 *Id.* Finally, Plaintiff claims that Defendant Corona failed to respond in “a reasonable manner” to  
10 the two incidents during which Plaintiff was assaulted. *Id.*

11 Liberally construed, the allegations of the complaint state a claim for deliberate  
12 indifference to Plaintiff’s safety in violation of his Eighth Amendment rights. Plaintiff has alleged  
13 facts sufficient to link Defendant Corona to this claim.

14 **III. CONCLUSION**

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

- 16 1. Plaintiff’s claims for injunctive relief based on his confinement at CTF are  
17 **DISMISSED** as moot.
- 18 2. Plaintiff’s claim against Defendant Corona in his official capacity for monetary  
19 damages is **DISMISSED** with prejudice.
- 20 3. Plaintiff’s complaint states a claim for deliberate indifference to Plaintiff’s safety in  
21 violation of his Eighth Amendment rights against Defendant Corona.
- 22 4. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of  
23 Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint  
24 and all attachments thereto (dkt. 1), and a copy of this Order to **CTF Correctional Sergeant**  
25 **Corona**. The Clerk shall also mail a copy of the complaint and a copy of this Order to the State  
26 Attorney General’s Office in San Francisco. Additionally, the Clerk shall mail a copy of this  
27 Order to Plaintiff.
- 28 5. Defendant is cautioned that Rule 4 of the Federal Rules of Civil Procedure requires

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

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

17 a. No later than **sixty (60) days** from the date Defendant's answer is due,  
18 Defendant shall file a motion for summary judgment or other dispositive motion. The motion  
19 must be supported by adequate factual documentation, must conform in all respects to Federal  
20 Rule of Civil Procedure 56, and must include as exhibits all records and incident reports stemming  
21 from the events at issue. A motion for summary judgment also must be accompanied by a *Rand*<sup>3</sup>  
22 notice so that Plaintiff will have fair, timely, and adequate notice of what is required of him in  
23 order to oppose the motion. *Woods v. Carey*, 684 F.3d 934, 935 (9th Cir. 2012) (notice  
24 requirement set out in *Rand* must be served concurrently with motion for summary judgment). A  
25 motion to dismiss for failure to exhaust available administrative remedies must be accompanied by  
26 a similar notice. However, the Court notes that under the new law of the circuit, in the rare event  
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28 <sup>3</sup> *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998).

1 that a failure to exhaust is clear on the face of the complaint, Defendant may move for dismissal  
2 under Rule 12(b)(6), as opposed to the previous practice of moving under an unenumerated Rule  
3 12(b) motion. *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (overruling *Wyatt v. Terhune*,  
4 315 F.3d 1108, 1119 (9th Cir. 2003), which held that failure to exhaust available administrative  
5 remedies under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), should be raised by a  
6 defendant as an unenumerated Rule 12(b) motion). Otherwise, if a failure to exhaust is not clear  
7 on the face of the complaint, Defendant must produce evidence proving failure to exhaust in a  
8 motion for summary judgment under Rule 56. *Id.* If undisputed evidence viewed in the light most  
9 favorable to Plaintiff shows a failure to exhaust, Defendant is entitled to summary judgment under  
10 Rule 56. *Id.* But if material facts are disputed, summary judgment should be denied and the  
11 district judge rather than a jury should determine the facts in a preliminary proceeding. *Id.* at  
12 1168.

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

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

19 c. Plaintiff is advised that a motion for summary judgment under Rule 56 of  
20 the Federal Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you  
21 must do in order to oppose a motion for summary judgment. Generally, summary judgment must  
22 be granted when there is no genuine issue of material fact—that is, if there is no real dispute about  
23 any fact that would affect the result of your case, the party who asked for summary judgment is  
24 entitled to judgment as a matter of law, which will end your case. When a party you are suing  
25 makes a motion for summary judgment that is properly supported by declarations (or other sworn  
26 testimony), you cannot simply rely on what your complaint says. Instead, you must set out  
27 specific facts in declarations, depositions, answers to interrogatories, or authenticated documents,  
28 as provided in Rule 56(c), that contradicts the facts shown in the defendant's declarations and

1 documents and show that there is a genuine issue of material fact for trial. If you do not submit  
2 your own evidence in opposition, summary judgment, if appropriate, may be entered against you.  
3 If summary judgment is granted, your case will be dismissed and there will be no trial. *Rand*, 154  
4 F.3d at 962-63.

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

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

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

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

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

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

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

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

IT IS SO ORDERED.

Dated: July 24, 2017

  
YVONNE GONZALEZ ROGERS  
United States District Judge