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United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ALBERT RILEY,  
Plaintiff,  
v.  
T. FRIEDERICHS, et al.,  
Defendants.

Case No. [18-cv-02283-DMR](#) (PR)

**ORDER OF SERVICE**

**INTRODUCTION**

Plaintiff, a state prisoner currently incarcerated at the California Training Facility (“CTF”), has filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983, alleging that Defendants were deliberately indifferent to his medical needs. Plaintiff seeks monetary damages as well as declaratory and injunctive relief.

Plaintiff has consented to magistrate judge jurisdiction. Dkt. 1 at 4. Therefore, this matter has been assigned to the undersigned Magistrate Judge.

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 claims are alleged to have occurred at CTF in Monterey County, which is located in this judicial district. *See* 28 U.S.C. § 1391(b).

In his complaint, Plaintiff names the following Defendants: California Department of Corrections and Rehabilitation (“CDCR”) Prison Doctors T. Friederichs, Z. Ahmed, and G. Kalisher.

**DISCUSSION**

**I. STANDARD OF REVIEW**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks

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

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

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

24 Plaintiff alleges that “medical records as far back as 2015 substantiates that” he suffers  
25 from “(1) severe back spasms, (2) severe muscle/skeletal pain, (3) severe sciatica nerve pain;  
26 (4) twitching; (5) spinal/vertebral pain; and (6) severe knee pain.” Dkt. 1 at 8.<sup>1</sup> Plaintiff claims

27 \_\_\_\_\_  
28 <sup>1</sup> Page number citations refer to those assigned by the Court’s electronic case management filing  
system and not those assigned by Plaintiff.

1 that from 2016 through 2017, his requests for appropriate tests, effective pain medication, and a  
2 “Lower Bunk/Lower Tier Chrono” were deliberately disregarded and denied by the named  
3 Defendants. *Id.* at 8-14. The denials contributed to and prolonged Plaintiff’s pain and suffering.  
4 *Id.* at 15-17.

5 Liberally construed, the complaint states a cognizable Eighth Amendment claim against  
6 Defendants Friederichs, Ahmed, and Kalisher for deliberate indifference to Plaintiff’s serious  
7 medical needs.

8 **CONCLUSION**

9 For the foregoing reasons, the court orders as follows:

- 10 1. Plaintiff complaint states a cognizable claim of deliberate indifference to his  
11 medical needs against Defendants Friederich, Ahmed, and Kalisher.
- 12 2. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of  
13 Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint  
14 and all attachments thereto (dkt. 1), a Magistrate Judge jurisdiction consent form, and a copy of  
15 this Order to the following Defendants at CTF: CDCR Prison Doctors T. Friederichs, Z. Ahmed,  
16 and G. Kalisher.

17 The Clerk shall also mail a copy of the complaint and a copy of this Order to the State  
18 Attorney General’s Office in San Francisco. Additionally, the Clerk shall mail a copy of this  
19 Order to Plaintiff.

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

1 summons is necessary.) Defendants are asked to read the statement set forth at the foot of the  
2 waiver form that more completely describes the duties of the parties with regard to waiver of  
3 service of the summons. If service is waived after the date provided in the Notice but before  
4 Defendants have been personally served, the Answer shall be due **sixty (60) days** from the date on  
5 which the request for waiver was sent or **twenty (20) days** from the date the waiver form is filed,  
6 whichever is later. **Defendants shall also respond to the Notice of Assignment of Prisoner**  
7 **Case to a United States Magistrate Judge for Trial by filing a consent/declination form on**  
8 **the date the Answer is due.**

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

11 a. No later than **sixty (60) days** from the date their answer is due, Defendants  
12 shall file a motion for summary judgment or other dispositive motion. The motion must be  
13 supported by adequate factual documentation, must conform in all respects to Federal Rule of  
14 Civil Procedure 56, and must include as exhibits all records and incident reports stemming from  
15 the events at issue. A motion for summary judgment also must be accompanied by a *Rand*<sup>2</sup> notice  
16 so that Plaintiff will have fair, timely and adequate notice of what is required of him in order to  
17 oppose the motion. *Woods v. Carey*, 684 F.3d 934, 935 (9th Cir. 2012) (notice requirement set out  
18 in *Rand* must be served concurrently with motion for summary judgment). A motion to dismiss  
19 for failure to exhaust available administrative remedies must be accompanied by a similar notice.  
20 However, the court notes that under the new law of the circuit, in the rare event that a failure to  
21 exhaust is clear on the face of the complaint, Defendants may move for dismissal under Rule  
22 12(b)(6) as opposed to the previous practice of moving under an unenumerated Rule 12(b) motion.  
23 *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (en banc) (overruling *Wyatt v. Terhune*, 315  
24 F.3d 1108, 1119 (9th Cir. 2003), which held that failure to exhaust available administrative  
25 remedies under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), should be raised by a  
26 defendant as an unenumerated Rule 12(b) motion). Otherwise if a failure to exhaust is not clear on  
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28 <sup>2</sup> *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998).

1 the face of the complaint, Defendants must produce evidence proving failure to exhaust in a  
2 motion for summary judgment under Rule 56. *Id.* If undisputed evidence viewed in the light most  
3 favorable to Plaintiff shows a failure to exhaust, Defendants are entitled to summary judgment  
4 under Rule 56. *Id.* But if material facts are disputed, summary judgment should be denied and the  
5 district judge rather than a jury should determine the facts in a preliminary proceeding. *Id.* at  
6 1168.

7 If Defendants are of the opinion that this case cannot be resolved by summary judgment,  
8 they shall so inform the court prior to the date the summary judgment motion is due. All papers  
9 filed with the court shall be promptly served on Plaintiff.

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

13 c. Plaintiff is advised that a motion for summary judgment under Rule 56 of  
14 the Federal Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you  
15 must do in order to oppose a motion for summary judgment. Generally, summary judgment must  
16 be granted when there is no genuine issue of material fact—that is, if there is no real dispute about  
17 any fact that would affect the result of your case, the party who asked for summary judgment is  
18 entitled to judgment as a matter of law, which will end your case. When a party you are suing  
19 makes a motion for summary judgment that is properly supported by declarations (or other sworn  
20 testimony), you cannot simply rely on what your complaint says. Instead, you must set out  
21 specific facts in declarations, depositions, answers to interrogatories, or authenticated documents,  
22 as provided in Rule 56(e), that contradicts the facts shown in the defendant's declarations and  
23 documents and show that there is a genuine issue of material fact for trial. If you do not submit  
24 your own evidence in opposition, summary judgment, if appropriate, may be entered against you.  
25 If summary judgment is granted, your case will be dismissed and there will be no trial. *Rand*, 154  
26 F.3d at 962-63.

27 Plaintiff also is advised that—in the rare event that Defendants argue that the failure to  
28 exhaust is clear on the face of the complaint—a motion to dismiss for failure to exhaust available

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

13 (The notices above do not excuse Defendants' obligation to serve similar notices again  
14 concurrently with motions to dismiss for failure to exhaust available administrative remedies and  
15 motions for summary judgment. *Woods*, 684 F.3d at 935.)

16 d. Defendants shall file a reply brief no later than **fourteen (14) days** after the  
17 date Plaintiff's opposition is filed.

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

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

23 6. All communications by Plaintiff with the court must be served on Defendants or  
24 their counsel, once counsel has been designated, by mailing a true copy of the document to them.

25 7. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the court  
26 informed of any change of address and must comply with the court's orders in a timely fashion.  
27 Pursuant to Northern District Local Rule 3-11 a party proceeding *pro se* whose address changes  
28 while an action is pending must promptly file a notice of change of address specifying the new

1 address. *See* L.R. 3-11(a). The court may dismiss without prejudice a complaint when: (1) mail  
2 directed to the *pro se* party by the court has been returned to the court as not deliverable, and  
3 (2) the court fails to receive within sixty days of this return a written communication from the *pro*  
4 *se* party indicating a current address. *See* L.R. 3-11(b).

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

7 IT IS SO ORDERED.

8 Dated: July 23, 2018



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10 DONNA M. RYU  
11 United States Magistrate Judge

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1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 ALBERT RILEY,  
4 Plaintiff,  
5 v.  
6 T. FRIEDERICHS, et al.,  
7 Defendants.  
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Case No. [18-cv-02283-DMR](#)

**CERTIFICATE OF SERVICE**

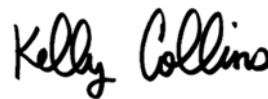
9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.  
10 District Court, Northern District of California.

11  
12 That on July 23, 2018, I SERVED a true and correct copy(ies) of the attached, by placing  
13 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
15 receptacle located in the Clerk's office.  
16

17 Albert Riley ID: P91107  
18 California Training Facility  
19 P.O. Box 689  
20 Soledad, CA 93960-0689

21 Dated: July 23, 2018

22  
23 Susan Y. Soong  
24 Clerk, United States District Court

25 

26 By: \_\_\_\_\_  
27 Kelly Collins, Deputy Clerk to the  
28 Honorable DONNA M. RYU