

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3  
4 JAMES DAVID WILLIAMS,  
5 Plaintiff,  
6 v.  
7 CRAIG KOENIG, et al.,  
8 Defendants.

Case No. [20-cv-04348-YGR](#) (PR)

**ORDER OF DISMISSAL WITHOUT  
PREJUDICE**

9 Plaintiff, a state prisoner currently incarcerated at the Correctional Training Facility (“CTF”),  
10 filed the present *pro se* civil rights action pursuant to 42 U.S.C. § 1983 alleging constitutional rights  
11 violations. He has been granted leave to proceed *in forma pauperis*. Dkt. 6.

12 In his complaint, Plaintiff named the following Defendants at CTF: Warden Craig Koenig;  
13 Chief Medical Executive Steve Posson; Primary Care Provider Dr. Racheal Anderson and Dr.  
14 Nguyen; Associate Deputy Warden K. Hoffman; Associate Warden T. Lemon; Dr. M. Sweet;  
15 “HCCA” R. Catrina; “HCAU” C. Freeman, Lt. J. Borroso; Chief of Health Care Appeals S. Gates;  
16 and Appeal Examiner K. J. Allen.<sup>1</sup> Dkt. 1 at 2. Plaintiff seeks injunctive relief and monetary  
17 damages. *Id.* at 3.

18 In an Order dated January 15, 2021, the Court conducted an initial screening of the complaint  
19 pursuant to 28 U.S.C. § 1915A(a). Dkt. 7. The Court gave the following summary of Plaintiff’s  
20 claims:

21 Plaintiff claims that he “suffers significant and recurrent pain from his  
22 back condition,” which “is causing the spasms/pinching [he] has been  
23 reporting for over two years . . . .” Dkt. 1 at 9-10. He alleges the  
24 following claims: (1) an “ADA5 ” violation stemming for  
25 Defendants’ denial of his “CDCR [Form] 1824 Reasonable  
26 Accommodation Request under the Americans with Disability Act,”  
27 which led to the denial of a “‘back-brace’ for supportive measure”  
and the denial of his request for a “ladder-handrail-grab-bar” in order  
to “come up or down from a[n] upper bunk”; (2) a claim of deliberate  
indifference to his serious medical needs in violation of his Eighth  
Amendment rights, stemming from Defendants’ “repeated[.]” denial  
of Plaintiff’s request for an MRI,<sup>6</sup> and their “remov[al] [of]

28 <sup>1</sup> Plaintiff did not indicate what either “HCCA” or “HCAU” stand for. *See* Dkt. 1 at 2.

1 treatments” such as “Low Bunk Only (LBO) accommodation”; and  
2 (3) Defendant Koenig’s “fail[ure] to provide a safe way to access . . .  
3 upper bunk [due to] no ladder [or] handrail” leading to a “violat[ion]  
4 [of] the Eighth Amendment when they act[ed] with deliberate  
5 indifference to a prison condition (bed access) that exposes [P]laintiff  
6 to an unreasonable risk of harm . . . .” Dkt. 1 at 3-11.

7 *Id.* at 3.

8 First, the Court found that Plaintiff’s claims could not proceed as pleaded because he has  
9 not directly linked all of the named CTF Defendants to his allegations. *Id.* at 4. Specifically, the  
10 Court noted that Plaintiff’s claims were “brought against numerous defendants, some of whom  
11 either are not mentioned in his statement of facts, or are linked only in a conclusory manner to his  
12 claims.” *Id.* The Court added that “some of the named CTF defendants are supervisory officials,  
13 against whom liability is alleged solely in their respondent superior capacity, which is improper.”  
14 *Id.* (citing *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (Under no circumstances is there  
15 respondeat superior liability under section 1983.).

16 The Court also found that Plaintiff failed to support his claim of deliberate indifference  
17 based on his “conclusory” claims that Defendants were ““intentionally interfering with the  
18 diagnosis and treatments once prescribed,”” and “have failed to respond appropriately to [his]  
19 serious medical needs.” *Id.* at 4-5. The Court further elaborated and gave the following  
20 instructions Plaintiff:

21 While Plaintiff claims that his repeated requests for an MRI or for an  
22 LBO accommodation were denied, he fails to link each named  
23 Defendant to any specific acts of deliberate indifference, including  
24 the aforementioned denial of his requests. He must allege facts in his  
25 amended complaint showing both a serious medical need and  
26 deliberate indifference thereto by each named Defendant.

27 *Id.* at 5. The Court noted that Plaintiff attached copies of his administrative “appeals/grievances”  
28 to his complaint form, but found this was “not sufficient” and added as follows:

Plaintiff may not simply attach documents and rely upon the court to  
parse through them to discover sufficient allegations to support his  
claims for relief. Rather, it is Plaintiff who must pull from his  
supporting documentation the allegations necessary to state a  
cognizable claim for relief under Section 1983, and he must include  
those allegations in his complaint. Plaintiff will be given leave to do  
so in an amended complaint.

*Id.*

1           Finally, as to Plaintiff’s Eighth Amendment claim based on Defendant Koenig’s alleged  
2 “fail[ure] to provide a safe way to access . . . upper bunk,” the Court dismissed this claim with  
3 leave to amend to provide more information. *Id.* (quoting Dkt. 1 at 5). The Court noted that the  
4 only defendant Plaintiff holds liable for this claim was the warden, but Plaintiff has not  
5 demonstrated the warden’s personal involvement in the constitutional deprivation. The Court  
6 directed as follows:

7           Plaintiff must show that the warden was deliberately indifferent to his  
8 safety. In an amended complaint, Plaintiff may wish to add  
9 defendants who denied any requests for a “ladder-handrail-grab bar.”  
10 *See* Dkt. 1 at 11. In addition, Plaintiff must demonstrate that the  
11 additional defendants’ failure to provide a “ladder-handrail-grab bar”  
12 violated the Eighth Amendment. A prison official violates the Eighth  
13 Amendment when two requirements are met: (1) the deprivation  
14 alleged must be, objectively, sufficiently serious, *Farmer*, 511 U.S. at  
15 834 (citing *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)), and (2) the  
16 prison official possesses a sufficiently culpable state of mind, *id.*  
17 (citing *Wilson*, 501 U.S. at 297). Specifically, Plaintiff should  
18 indicate if he requested a “ladder-handrail-grab bar” or provide more  
19 allegations how the denial such a request was sufficiently serious, and  
20 that these additional named defendants had a culpable state of mind.  
21 *See id.*

22 *Id.* Therefore, the Court dismissed the complaint with leave to amend to cure these pleading  
23 deficiencies. The Court granted Plaintiff twenty-eight days to file an amended complaint to cure  
24 the pleading deficiencies, or to suffer dismissal of the action.

25           On February 8, 2021, copies of the Court’s January 15, 2021 Order and its Order granting  
26 *in forma pauperis* status (Dkts. 6, 7) sent by mail to the Plaintiff by the Court was returned as  
27 undeliverable to the Clerk of the Court with the following notation: “RETURN TO SENDER.  
28 UNDELIVERABLE AS ADDRESSED. UNABLE TO FORWARD.” Dkt. 9.

          On February 12, 2021, Plaintiff filed a notice of appeal to the Ninth Circuit Court of  
Appeals. Dkt. 10.

          On March 10, 2021, the Ninth Circuit dismissed the appeal for lack of jurisdiction. Dkt.  
12. Thereafter, the Ninth Circuit issued its mandate. Dkt. 13.

          On March 29, 2021, the Clerk re-sent copies of the Court’s January 15, 2021 Order and its  
Order granting *in forma pauperis* status (Dkt. 6, 7) to Plaintiff using his updated address on file.  
This mailing has not been returned undeliverable. In essence, re-sending the January 15, 2021

1 Order granted Plaintiff another twenty-eight days to file an amended complaint to correct the  
2 deficiencies outlined in that Order. Again, Plaintiff was warned that the failure to timely file an  
3 amended complaint would result in the dismissal of this action for failure to prosecute. Dkt. 7 at  
4 8. The deadline to file his amended complaint was April 26, 2021.

5 The time for Plaintiff to file his amended complaint has passed, and no amended complaint  
6 has been filed. In addition, Plaintiff has not filed any further communications with the Court since  
7 his February 12, 2021 Notice of Appeal. Taking into account the salient factors set forth in *Ferdik*  
8 *v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992), the Court finds that dismissal is warranted under  
9 Federal Rule of Civil Procedure 41(b).<sup>2</sup> See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 989, 992  
10 (9th Cir. 1999) (affirming dismissal of action following plaintiff's failure to amend complaint after  
11 receiving leave to do so, where the interest in expeditious resolution of litigation, the court's  
12 management of its docket, and avoiding prejudice to defendants favored dismissal).

13 Accordingly, IT IS HEREBY ORDERED that the complaint in the above-captioned action  
14 is DISMISSED WITHOUT PREJUDICE.

15 The Clerk shall close the file.

16 IT IS SO ORDERED.

17 Dated: June 7, 2021

18   
19 JUDGE YVONNE GONZALEZ ROGERS  
United States District Judge

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25 <sup>2</sup> If and when Plaintiff is prepared to pursue his claims, he may file a new civil rights  
26 action. The limitations period to file a section 1983 action in California is two years, but it is  
27 tolled for up to two years during a continuous period of incarceration. See *Silva v. Crain*, 169 F.  
28 3d 608, 610 (9th Cir. 1999) (holding, pursuant to Cal. Civ. Proc. Code § 340(3), that the  
limitations period for filing a section 1983 action in California is one year); S.B. 688 (amending  
Cal. Civ. Proc. Code § 340(3) and adding section 335.1 to establish two-year residual limitations  
period for personal injury actions); Cal. Civ. Proc. Code § 352.1(a) (providing for an additional  
two years of tolling during a period of continual imprisonment).