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7UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA10
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28JACOB SILVERMAN,
Plaintiff,

v.

DUANE CHRISTIAN, et al.,
Defendants.

Case No. 20-05136 BLF (PR)

**ORDER GRANTING MOTION TO
DISMISS**

(Docket No. 17)

Plaintiff, a pre-trial detainee, filed a *pro se* civil rights complaint under 42 U.S.C. § 1983, against jail officers and medical personnel at the Humboldt County Correctional Facility (“HCCF”) where he was formerly housed. Dkt. No. 1. The Court found the complaint stated a cognizable claim under the Fourteenth Amendment for the deprivation of medical care. Dkt. No. 6 at 2. The Court ordered the matter served on Defendants Captain Duane Christian, Lt. Dean Flint, Iver Lein, Nurse Barnheart, Lt. Jason Benge, and Dr. Ziegler.¹ *Id.* at 3.

Defendants Flint, Benge, and Christian have filed a motion to dismiss under Federal

¹ The Court dismissed HCCF as a defendant because Plaintiff made no separate allegations against the Facility. Dkt. No. 6 at 3.

1 Rule of Civil Procedure 12(b)(6) on the grounds that Plaintiff failed to plead sufficient
2 facts to establish how each individual Defendant was specifically involved in the alleged
3 unconstitutional conduct.² Dkt. No. 17 at 1-2. Although given ample time to do so,
4 Plaintiff has filed no opposition in this matter, and has had no further communication with
5 the Court since filing the complaint. Defendants filed a notice of Plaintiff's non-
6 opposition to their motion, requesting the Court grant their motion to dismiss. Dkt. No. 19.

7 For the reasons discussed below, Defendants' motion to dismiss is **GRANTED**.

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9 DISCUSSION

10 **I. Plaintiff's Allegations**

11 Plaintiff's allegations are presented in a single paragraph in the "statement of claim"
12 section of the form complaint. Dkt. No. 1 at 3. Plaintiff claims that on July 6 and July 8,
13 2018, he was tazed on the forearm "causing ultimately acute denervation/numbing
14 permanently since." *Id.* Plaintiff claims that "staff was informed right away," and that
15 Defendant Iver Lien refused to treat him. *Id.* Plaintiff claims that "no medical staff" came
16 to his aid, "the Doctor refused immediate aid upon formal verbal notice as well," and "all
17 medical requests were ignored." *Id.* Plaintiff claims that all his grievances were denied.
18 *Id.* Plaintiff claims that "[e]ach party is directly and indirectly involved be it conspiracy to
19 deny 14th Amendment rights and/or deliberate indifference and reckless disregard to fail to
20 treat this medically and act as if not important [sic]."*Id.* Plaintiff claims that Defendant
21 Duane Christian "is involved in failure to treat plaintiff and failure of oversight to lack of
22 medical treatment and those under his responsibility in being involved to thwart and
23 oppress plaintiff of medical treatment and grievance process."*Id.* Plaintiff claims that he
24 suffered "permanent denervation/numbness in half of his left hand and 4th and 5th digit"

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26 ² Defendants Barnheart, Lien and Ziegler filed a separate motion for summary judgment on
27 September 13, 2021, which is not yet submitted. Dkt. No. 25.
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1 because he was never medically treated. *Id.* Plaintiff seeks damages. *Id.* Along with the
2 complaint, Plaintiff filed copies of several grievances regarding his requests for
3 neurological appointments. Dkt. No. 1 at 4-13.

4 **II. Motion to Dismiss**

5 In their motion to dismiss, Defendants Christian, Flint, and Benge argue that
6 Plaintiff failed to plead sufficient facts to establish how each of them was specifically
7 involved in the alleged unconstitutional conduct. Dkt. No. 17 at 1-2.

8 **A. Standard of Review**

9 A complaint must contain “a short and plain statement of the claim showing that the
10 pleader is entitled to relief,” Fed. R. Civ. P. 8(a)(2) and a complaint that fails to do so is
11 subject to dismissal pursuant to Rule 12(b)(6). To survive a Rule 12(b)(6) motion to
12 dismiss, the plaintiff must allege “enough facts to state a claim to relief that is plausible on
13 its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This “facial plausibility”
14 standard requires the plaintiff to allege facts that add up to “more than a sheer possibility
15 that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
16 Dismissal for failure to state a claim is a ruling on a question of law. *See Parks School of*
17 *Business, Inc., v. Symington*, 51 F.3d 1480, 1483 (9th Cir. 1995). “The issue is not
18 whether plaintiff will ultimately prevail, but whether he is entitled to offer evidence to
19 support his claim.” *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987).
20 Allegations of fact in the complaint must be taken as true and construed in the light most
21 favorable to the non-moving party. *See Symington*, 51 F.3d at 1484. The court may
22 consider ““allegations contained in the pleadings, exhibits attached to the complaint, and
23 matters properly subject to judicial notice.”” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th
24 Cir. 2012) (internal citation omitted).

25 **B. Fourteenth Amendment Claim**

26 Liberally construing Plaintiff’s allegations, the Court found the complaint stated a
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1 deliberate indifference claim under the Fourteenth Amendment. Dkt. No. 6 at 2.
2 Defendants contend that Plaintiff fails to allege any facts to support his Fourteenth
3 Amendment claim against them. Dkt. No. 17 at 4.

4 A claim for a violation of a pretrial detainee's right to adequate medical care arises
5 under the Fourteenth Amendment rather than the Eighth Amendment. *See Gordon v.*
6 *County of Orange*, 888 F.3d 1118, 1122 & n.4 (9th Cir. 2018). The claim is evaluated
7 under an objective deliberate indifference standard.

8 [T]he elements of a pretrial detainee's medical care claim against
9 an individual defendant under the due process clause of the
10 Fourteenth Amendment are: (i) the defendant made an
11 intentional decision with respect to the conditions under which
12 the plaintiff was confined; (ii) those conditions put the plaintiff
13 at substantial risk of suffering serious harm; (iii) the defendant
14 did not take reasonable available measures to abate that risk,
15 even though a reasonable official in the circumstances would
16 have appreciated the high degree of risk involved—making the
17 consequences of the defendant's conduct obvious; and (iv) by
18 not taking such measures, the defendant caused the plaintiff's
19 injuries.

20 *Id.* at 1125. With regard to the third element, the defendant's conduct must be objectively
21 unreasonable -- “a test that will necessarily turn[] on the facts and circumstances of each
22 particular case.” *Id.* (citations and internal quotation marks omitted). The four-part test
23 articulated in *Gordon* requires the plaintiff to allege facts demonstrating more than
24 negligence, but less than subjective intent --something akin to reckless disregard. *Id.*

25 Liability may be imposed on an individual defendant under 42 U.S.C. § 1983 if the
26 plaintiff can show that the defendant's actions both actually and proximately caused the
27 deprivation of a federally protected right. *Lemire v. Cal. Dept. of Corrections &*
Rehabilitation, 726 F.3d 1062, 1085 (9th Cir. 2013); *Leer v. Murphy*, 844 F.2d 628, 634
(9th Cir. 1988). A person deprives another of a constitutional right within the meaning of
28 section 1983 if he does an affirmative act, participates in another's affirmative act or omits
to perform an act which he is legally required to do, that causes the deprivation of which
the plaintiff complains. *See Leer*, 844 F.2d at 633; *see, e.g., Robins v. Meecham*, 60 F.3d

1 1436, 1442 (9th Cir. 1995) (prison official’s failure to intervene to prevent 8th Amendment
2 violation may be basis for liability).

3 First, Defendants assert that Plaintiff’s allegation that Defendant Christian was
4 involved in failing to treat him and have proper oversight over subordinates is conclusory,
5 without any facts in support. Dkt. No. 17 at 4. Defendants assert that Plaintiff alleges no
6 facts explaining how Defendant Christian was specifically involved in the failure to treat
7 Plaintiff, nor does he allege facts identifying the individuals Defendant Christian failed to
8 oversee. *Id.* Defendants also contend that Plaintiff fails to allege any facts explaining how
9 Defendant Christian’s lack of oversight of “those under his responsibility” contributed to
10 Defendants’ failure to provide adequate medical treatment. *Id.* Defendants assert that
11 without such specific allegations, Plaintiff cannot establish a viable deliberate indifference
12 claim under the Fourteenth Amendment against Defendant Christian. *Id.* at 5.

13 Defendants are correct. Plaintiff’s brief statement of claim contains no specific
14 facts to support all the elements for a Fourteenth Amendment claim against Defendant
15 Christian. He makes one statement against Defendant Christian whom he claims is
16 “involved in failure to treat” and “failure of oversight” of those “under his responsibility”
17 who were involved in the denial of adequate medical care. Dkt. No. 1 at 3. As Defendants
18 point out, Plaintiff fails to provide specific facts explaining how Defendant Christian was
19 involved in the failure to provide treatment, the nature of his oversight responsibilities, and
20 who were his subordinates. *Id.* As such, Plaintiff fails to satisfy the first element, i.e., that
21 Defendant Christian made an intentional decision with respect to the conditions under
22 which Plaintiff was confined. *See Gordon*, 888 F.3d at 1125. Even if it were assumed that
23 Plaintiff satisfied the second element, i.e., that the conditions of confinement put him at
24 substantial risk of serious harm, he fails to allege facts to satisfy the third element - that a
25 reasonable official in the same circumstances as Defendant Christian would have
26 appreciated the high degree of risk before Plaintiff and taken reasonable available

1 measures to abate that risk, the third element. *Id.* Lastly, Plaintiff fails to allege how
2 Defendant Christian's failure to act caused his injuries. *Id.* Without specific allegations,
3 Plaintiff cannot establish that Defendant Christian is liable for the violation of his
4 Fourteenth Amendment rights. *See Leer*, 844 F.2d at 633. Accordingly, Plaintiff has
5 failed to establish a Fourteenth Amendment claim against Defendant Christian.

6 Defendants next assert that Plaintiff's "Statement of Claim" fails to allege any facts
7 against Defendants Benge and Flint specifically. Dkt. No. 17 at 5. Plaintiff merely makes
8 the general allegation that "*each party* is directly and indirectly involved" in the violation
9 of his rights. *Id.*, (emphasis added). Defendants contend that other than this conclusory
10 allegation against "each party," Plaintiff makes no specific allegations against Defendants
11 Benge and Flint at all. *Id.* Defendants contend that Plaintiff has failed to make the
12 required factual allegations to put them on notice of his claims against them. *Id.*, citing
13 *Scalia v. County of Kern*, 308 F.Supp.3d 1064, 1072 (E.D. Cal. 2018). The Court agrees.
14 Plaintiff only includes Defendants Flint and Benge's names in his list of defendants, Dkt.
15 No. 1 at 2, then makes no mention of their names or specific allegations against them in his
16 "statement of claim." *Id.* at 3. Defendant Flint's name does appear on two of the
17 grievances attached to the complaint, as the responder at the first level. *Id.* at 6, 7.
18 However, Plaintiff provides no explanation as to the significance of Defendant Flint's
19 responses and how it violated his Fourteenth Amendment rights. As Defendants assert,
20 Dkt. No. 17 at 5, Plaintiff's allegations that "all grievances were denied" is simply
21 deficient, as there are no specific facts demonstrating how the grievance procedure
22 impacted his ability to obtain medical care. Based on the foregoing, Plaintiff has not
23 provided sufficient allegations to establish Defendants Benge and Flint's liability for his
24 injuries under the Fourteenth Amendment. *See Leer*, 844 F.2d at 633.

25 Based on the foregoing, Defendants have shown that Plaintiff has failed to plead
26 specific facts against Defendants Christian, Benge, and Flint that demonstrate that these
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1 defendants are liable for his injuries under the Fourteenth Amendment. In response,
2 Plaintiff has filed no opposition to Defendants' motion to dismiss, to either argue that the
3 complaint is not deficient and that his claims are sufficiently plead or that he can correct
4 these deficiencies if permitted to file an amended complaint. Even after Defendants filed
5 their notice of Plaintiff's non-opposition to their motion on April 23, 2021, there has been
6 no further filing from Plaintiff in this matter. Dkt. No. 19.

7 Furthermore, the last court mail sent to Plaintiff was returned as undeliverable on
8 September 20, 2021.³ Dkt. No. 26. The notation on the returned envelope states that the
9 mail was "unclaimed" and "unable to forward." *Id.* This address, however, appears to still
10 be active because Plaintiff recently filed a separate action indicating the same mailing
11 address used in this action. *See* Case No. 21-cv-08054-BLF, Dkt. No. 1 at 1.⁴ There is no
12 indication that Plaintiff did not receive Defendants' motion or that he needs more time to
13 file an opposition. Accordingly, the Court finds no good cause for granting Plaintiff an
14 opportunity to file an amended complaint to correct the deficiencies in the pleading with
15 respect to his claims against Defendants Christian, Benge, and Flint. Their motion to
16 dismiss shall be granted and the claims against them shall be dismissed with prejudice.

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18 **CONCLUSION**

19 For the reasons stated above, Defendant D. Christian, D. Flint, and J. Benge's
20 motion to dismiss is **GRANTED**. Dkt. No. 17. The Fourteenth Amendment claim against
21 them is **DISMISSED with prejudice** for failure to state a claim. The Clerk shall
22 terminate these Defendants from this action as the claims against them have been
23 dismissed.

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25 ³ This mail contained a copy of the court order granting Defendants' motion for a second
extension of time to file their motion for summary judgment. *See* Dkt. No. 23.

26 ⁴ Plaintiff signed the complaint for that new action on October 13, 2021, and it was
27 stamped received on the same day. Dkt. No. 1 at 3; Dkt. No. 1-1 at 1.

1 This order terminates Docket No. 17.

2 **IT IS SO ORDERED.**

3 Dated: October 28, 2021


Beth Labson Freeman
BETH LABSON FREEMAN
United States District Judge

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Order Granting MTD.
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