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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALLEN EDWARDS,

Plaintiff,

vs.

P. SHAKIBA, et al.,

Defendants.

Case No.: 3:18-cv-00179-MMA (JMA)

**ORDER DENYING PLAINTIFF’S
MOTION FOR DEFAULT
JUDGMENT;**

[Doc. No. 11]

**GRANTING IN PART AND
DENYING IN PART DEFENDANTS’
MOTION TO DISMISS**

[Doc. No. 14]

Plaintiff Allen Edwards, a California inmate proceeding *pro se*, brings this civil rights action against officials at R. J. Donovan Correctional Facility for violation of his Eighth and Fourteenth Amendment rights. Plaintiff moves for default judgment against all defendants. *See* Doc. No. 11. Defendants Scharr and Shakiba move to dismiss Plaintiff’s claims pursuant to Federal Rule of Civil Procedure 12(b)(6). *See* Doc. No. 14. In lieu of a response to Defendants’ motion, Plaintiff has submitted a letter brief in which he states that he has been transferred between facilities in retaliation for filing this action. *See* Doc. No. 16. For the reasons set forth below, the Court **DENIES** Plaintiff’s motion

1 for default judgment and **GRANTS IN PART** and **DENIES IN PART** Defendants’
2 motion to dismiss.

3 **BACKGROUND**¹

4 Plaintiff claims he is “developmentally disabled,” participates in the Enhanced
5 Outpatient Program (“EOP”), and suffers from a “serious medical condition in his hip”
6 requiring his use of a cane and a medically-authorized lower tier/bunk assignment. Doc.
7 No. 1 at 3-4. As a result, in 2011, Plaintiff was prescribed a permanent lower tier/bunk
8 chrono. *See* Ex. E, Doc. No. 1 at 29-32.² However, on December 9, 2016, Plaintiff was
9 awakened at 11:30 p.m. by Officer Brown,³ who informed him Defendant Scharr was
10 ordering his transfer to an upper tier/ bunk in “General Population Building 3” because
11 “space was needed for another EOP inmate,” and “because he did not have a lower
12 tier/lower bunk chrono.” *Id.* Plaintiff objected, and was threatened with a disciplinary
13 transfer to Administrative Segregation, so he complied, but spent the night on the floor
14 “in much distress.” *Id.*

15 On December 10, 2016, Plaintiff was “rushed to [an] outside hospital for ...
16 abdominal pain,” but remained assigned to the top tier/bunk. *Id.* at 5. The next day,
17 Plaintiff fell while attempting to navigate the stairs with his cane, and was transported by
18 ambulance to the medical clinic. He was returned to “EOP Bldg. 1,” on December 12,
19 2016, where he was re-authorized for a lower tier/bunk assignment by Defendant
20 Shakiba, but for “5 days only.” *Id.* Plaintiff claims he then “began to have extreme pain
21 in his right shoulder after the fall down the stairs and the problems in his hip got worse,”
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24 ¹ In reviewing a motion to dismiss, the Court presumes the plaintiff’s factual allegations are true. *See*
25 *Young v. United States*, 769 F.3d 1047, 1052 (9th Cir. 2014).

26 ² Citations to electronically filed documents in the record refer to the pagination assigned by the
27 CM/ECF system.

28 ³ Officer Brown is named as a defendant in Plaintiff’s complaint, but has not been served with the
summons and complaint. *See* Doc. No. 9.

1 so he sought medical attention, but Defendant Shakiba told him “there was nothing
2 wrong with him,” denied him care, and “refused” to re-authorize his lower tier/bunk
3 assignment until an MRI conducted on March 10, 2017 revealed a tear in Plaintiff’s
4 shoulder tendon. *Id.* at 5-6, *see also* Ex. F, Doc. No. 1 at 33.

5 Plaintiff contends Defendants Scharr and Shakiba acted with “deliberate
6 indifference” to his serious medical needs in violation of the Eighth Amendment, and
7 violated his Fourteenth Amendment right to equal protection by “removing [him] from
8 EOP housing without a classification or mental health committee action,” and thereby
9 treating him differently than “similarly situated EOP prisoners” who must be provided
10 notice “when their chronos are expired and/or removed.” *Id.* at 7.

11 PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT

12 As an initial matter, Plaintiff moves for default judgment against Defendants.
13 However, obtaining a default judgment is a two-step process. *See Eitel v. McCool*, 782
14 F.2d 1470, 1471 (9th Cir. 1986). First, a party must obtain a clerk’s entry of default
15 under Federal Rule of Civil Procedure 55(a); thereafter, the party may seek entry of
16 default judgment under Rule 55(b). *See Symantec Corp. v. Global Impact, Inc.*, 559 F.3d
17 922, 923 (9th Cir. 2009). Plaintiff has not requested nor obtained entry of default by the
18 Clerk of Court as to Defendants. As such, Plaintiff’s motion for default judgment is
19 procedurally improper and subject to denial on this basis alone.

20 Even if the Court were to liberally construe Plaintiff’s motion as requesting entry
21 of default by the Clerk of Court pursuant to Rule 55(a), entry of default is appropriate
22 only “[w]hen a party against whom a judgment for affirmative relief is sought has failed
23 to plead or otherwise defend.” Defendants Scharr and Shakiba have appeared and filed a
24 motion to dismiss under Rule 12. Thus, Defendants have “otherwise defended” against
25 Plaintiff’s claims within 60 days after March 28, 2018, in compliance with Federal Rules
26 of Civil Procedure. Defendant Brown has not been served. *See* Doc. No. 9 (summons
27 returned unexecuted as to Defendant Brown). Entry of default by the Clerk of Court is
28 not appropriate as to any of the named defendants. Accordingly, the Court **DENIES**

1 Plaintiff's motion.

2 **DEFENDANTS' MOTION TO DISMISS**

3 Defendants Scharr and Shakiba move to dismiss Plaintiff's claims pursuant to
4 Federal Rule of Civil Procedure 12(b)(6). As noted above, Plaintiff has not filed a
5 response to Defendants' motion. However, the Court construes Plaintiff's letter brief as a
6 general opposition to the dismissal of his claims.

7 ***1. Legal Standard***

8 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the
9 sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).
10 Plaintiffs must plead "enough facts to state a claim to relief that is plausible on its face."
11 Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The
12 plausibility standard thus demands more than a formulaic recitation of the elements of a
13 cause of action, or naked assertions devoid of further factual enhancement. *Ashcroft v.*
14 *Iqbal*, 556 U.S. 662, 678 (2009). Instead, the complaint "must contain allegations of
15 underlying facts sufficient to give fair notice and to enable the opposing party to defend
16 itself effectively." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

17 In reviewing a motion to dismiss under Rule 12(b)(6), courts must accept as true
18 all material allegations in the complaint, as well as reasonable inferences to be drawn
19 from them, and must construe the complaint in the light most favorable to the plaintiff.
20 *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 973 (9th Cir. 2004), *citing Karam v. City*
21 *of Burbank*, 352 F.3d 1188, 1192 (9th Cir. 2003). The court need not take legal
22 conclusions as true merely because they are cast in the form of factual allegations.
23 *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987). Similarly, "conclusory
24 allegations of law and unwarranted inferences are not sufficient to defeat a motion to
25 dismiss." *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998).

26 Where a plaintiff appears *pro se* in a civil rights case, the court must construe the
27 pleadings liberally and afford the plaintiff any benefit of the doubt. *Karim-Panahi v. Los*
28 *Angeles Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988). The rule of liberal construction

1 is “particularly important in civil rights cases.” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261
2 (9th Cir. 1992). Where amendment of a *pro se* litigant’s complaint would be futile,
3 denial of leave to amend is appropriate. *See James v. Giles*, 221 F.3d 1074, 1077 (9th
4 Cir. 2000).

5 **2. Eighth Amendment Claim**

6 The Eighth Amendment prohibits the imposition of cruel and unusual punishment
7 and “embodies ‘broad and idealistic concepts of dignity, civilized standards, humanity
8 and decency.’” *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (quoting *Jackson v. Bishop*,
9 404 F.2d 571, 579 (8th Cir. 1968)). “[D]eliberate indifference to a prisoner’s serious
10 illness or injury states a cause of action under § 1983.” *Id.* at 105. A prison official
11 violates the Eighth Amendment only when two requirements are met: (1) the objective
12 requirement that the deprivation is “sufficiently serious,” *Farmer v. Brennan*, 511 U.S.
13 825, 834 (1994) (quoting *Wilson v. Seiter*, 501 U.S. 294, 298 (1991); and (2) the
14 subjective requirement that the prison official has a “sufficiently culpable state of mind.”
15 *Id.* (quoting *Wilson*, 501 U.S. at 298). For purposes of the instant motion, the Court finds
16 that Plaintiff has alleged sufficient facts to satisfy the objective requirement of his Eighth
17 Amendment claim.

18 With respect to the subjective component of his Eighth Amendment claim,
19 Plaintiff alleges that Defendant Scharr ordered Plaintiff transferred to an upper bunk in
20 general population housing despite Plaintiff advising Defendant regarding his lower
21 tier/bunk chrono and status as an EOP participant. Plaintiff alleges that Defendant
22 Shakiba was deliberately indifferent to his serious medical needs by repeatedly refusing
23 to honor his permanent lower tier/bunk chrono. In the Ninth Circuit, “allegations that a
24 prison official has ignored the instructions of a prisoner’s treating physician are sufficient
25 to state a claim for deliberate indifference.” *Wakefield v. Thompson*, 177 F.3d 1160,
26 1165 (9th Cir. 1999). The Court finds that Plaintiff’s allegations are sufficient to
27 plausibly suggest that Defendants were aware that Plaintiff’s previous treating physician
28 issued a medical chrono for a lower tier/bunk, but deliberately failed to honor it. *See e.g.*

1 *Brown v. Alexander*, No. CV 13-6143-BRO (RNB), 2014 U.S. Dist. LEXIS 110009, at
2 *20 (C.D. Cal. June 24, 2014) (finding that “plaintiff’s allegations here that defendants
3 ignored his repeated requests, and refused to take any action, to implement the order from
4 plaintiff’s treating physician that he be assigned to a lower bunk are sufficient to permit
5 the Court to draw a reasonable inference that defendants acted with deliberate
6 indifference to plaintiff’s medical needs.”). Accordingly, the Court denies Defendants’
7 motion to dismiss Plaintiff’s Eighth Amendment claim.

8 **3. Fourteenth Amendment Claim**

9 Plaintiff asserts that Defendants’ actions violated his right to equal protection
10 under the Fourteenth Amendment. The Equal Protection Clause requires that persons
11 who are similarly situated be treated alike. *City of Cleburne v. Cleburne Living Center,*
12 *Inc.*, 473 U.S. 432, 439 (1985). An equal protection claim may be established in two
13 ways. The first method requires a plaintiff to show that the defendant has intentionally
14 discriminated against the plaintiff on the basis of the plaintiff’s membership in a
15 protected class. *See, e.g., Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001).
16 If the action in question does not involve a suspect classification, a plaintiff may establish
17 an equal protection claim by showing that similarly situated individuals were
18 intentionally treated differently without a rational relationship to a legitimate state
19 purpose. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). In this case,
20 Plaintiff does not allege that he is a member of a protected class of inmates. Although he
21 alleges that he was treated differently than similarly situated EOP participants, he fails to
22 allege any facts to show that the treatment was intentional and without a legitimate
23 penological purpose. As such, his equal protection claim fails and the Court grants
24 Defendants’ motion to dismiss this claim.

25 **4. Leave to Amend**

26 Leave to amend should be granted if it appears possible that the defects in the
27 complaint could be corrected, especially if a plaintiff is *pro se*. *See Cato v. United States*,
28 70 F.3d 1103, 1106 (9th Cir. 1995) (“A *pro se* litigant must be given leave to amend his

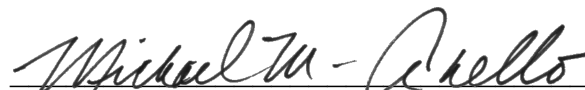
1 or her complaint, and some notice of its deficiencies, unless it is absolutely clear that the
2 deficiencies of the complaint could not be cured by amendment.”) (citing *Noll v. Carlson*,
3 809 F.2d 1446, 1448 (9th Cir. 1987)). In consideration of the Ninth Circuit’s liberal
4 amendment policy, particularly in civil rights cases where a prisoner is proceeding *pro se*,
5 the Court grants Plaintiff leave to file an amended complaint in order to cure the
6 deficiencies set forth above with respect to his Fourteenth Amendment equal protection
7 claim.

8 **CONCLUSION**

9 Based on the foregoing, the Court **DENIES** Plaintiff’s motion for default judgment
10 and **GRANTS IN PART** and **DENIES IN PART** Defendants’ motion to dismiss. The
11 Court **GRANTS** Plaintiff leave to file an amended complaint on or before
12 **September 28, 2018**. Plaintiff’s amended complaint must cure the deficiencies noted
13 herein, must be complete in itself without reference to the original complaint. *See* S.D.
14 Cal. CivLR 15.1. Any claims not re-alleged in the amended complaint will be considered
15 waived. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

16 **IT IS SO ORDERED.**

17 DATE: August 13, 2018

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19 HON. MICHAEL M. ANELLO
20 United States District Judge
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