

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Herrera-Ramos v. CDCR

Herrera-Ramos · No. 25-cv-01400 BLF (PR) · Decided July 14, 2025

OPINION

Herrera-Ramos v. CDCR

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10

JOSE HERRERA-RAMOS,

11 Case No. 25-cv-01400 BLF (PR) Plaintiff,

12 ORDER OF PARTIAL DISMISSAL

AND DISMISSAL WITH LEAVE TO

13 v. AMEND 14 CDCR, et al., 15 Defendants. 16 17 18 Plaintiff, a state prisoner, filed the
instant pro se civil rights action pursuant to 42 19 U.S.C. § 1983 against the CDCR, Officer
Orosco (a transportation officer), John Doe 20 officers, and Warden J. Lewis at Richard J.
Donovan Correctional Facility (“RJD”) in San 21 Diego, where he is currently confined. Dkt. No.
1 at 13-14. This matter was reassigned to 22 the undersigned on February 27, 2025. Dkt. No. 7.
Plaintiff’s motion for leave to proceed 23 in forma pauperis will be addressed in a separate order.

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25 DISCUSSION

26 A. Standard of Review 27 A federal court must conduct a preliminary screening in any case in
which a 1 governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify
any 2 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim 3
upon which relief may be granted or seek monetary relief from a defendant who is immune 4 from
such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally 5 construed.
See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988). 6 To state a claim under
42 U.S.C. § 1983, a plaintiff must allege two essential 7 elements: (1) that a right secured by the
Constitution or laws of the United States was 8 violated, and (2) that the alleged violation was
committed by a person acting under the 9 color of state law. See West v. Atkins, 487 U.S. 42, 48
(1988). 10 B. Plaintiff’s Claims 11 Plaintiff alleges that on or about August 21, 2024, he was
moved from Salinas 12 Valley State Prison (“SVSP”) to Soledad Correctional Training Facility
(“CTF”), for his 13 protection. Dkt. No. 1 ¶¶ 11, 14. On August 27, 2024, CTF’s Ad-Seg

Committee decided 14 to transfer Plaintiff to RJD. Id. ¶ 15. Plaintiff requested to be placed in a bus cage due to 15 safety concerns if placed with general population during the transport. Id. ¶ 17. The 16 complaint sets forth the following claims: 17 1. Claim One: “violation of the 8th Amendment retaliatory deliberate 18 indifference to plaintiff voice safety concern and failure to protect; [CDCR, 19 all John Does and C/O Orosco]” 20 On October 1, 2024, when Plaintiff was taken to CTF’s “R&R” for transfer 21 processing, he informed the two R&R officers and sergeant that he needed to be separated 22 from other inmates during transfer because Sureño gang members threatened to kill him 23 after learning he was a snitch. Id. ¶ 18. However, the three John Doe officers laughed and 24 told Plaintiff to “man up fool. You can snitch on staff you can be brave enough to defend 25 yoursel[f], now you need our help.” Id. ¶ 19. When he repeated his request two hours 26 later, the officers said, “pussy snitch” loud enough to the other inmates could hear. Id. ¶ 1 Officer Orosco during the body search, but they again expressed scorn and continued to 2 call him a snitch. Id. ¶¶ 22-23. They placed him on a seat surrounded by active Sureño 3 gang members and told him to “enjoy the ride.” Id. ¶ 25. After Defendants locked the 4 doors, three inmates slipped out of their handcuffs and started beating Plaintiff. Id. ¶ 26. 5 Although Plaintiff yelled for help, Defendants watched for about 8 to 10 minutes while he 6 was “beaten unconscious.” Id. Then they picked him up and sat him on the bus bench, 7 secured the other inmates in handcuffs, and denied Plaintiff medical attention. Id. ¶ 27. 8 Plaintiff claims their conduct constitutes retaliation and deliberate indifference to his safety 9 concerns. Id. ¶ 24. 10 Plaintiff’s allegations are sufficient to state a failure to protect claim against 11 Defendant Orosco and John Doe defendants. See *Farmer v. Brennan*, 511 U.S. 825, 833 12 (1994). Although the use of “John Doe” to identify a defendant is not favored in the Ninth 13 Circuit, see *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980); *Wiltsie v. Cal. Dep’t 14 of Corrections*, 406 F.2d 515, 518 (9th Cir. 1968), situations may arise where the identify 15 of alleged defendants cannot be known prior to the filing of a complaint. In such 16 circumstances, the plaintiff should be given an opportunity through discovery to identify 17 the unknown defendants, unless it is clear that discovery would not uncover their identities 18 or that the complaint should be dismissed on other grounds. See *Gillespie*, 629 F.2d at 19 642; *Velasquez v. Senko*, 643 F.Supp. 1172, 1180 (N.D. Cal. 1986). Here, it appears that 20 Plaintiff may be able to identify the appropriate defendants by name through discovery. 21 Therefore, Plaintiff shall be given an opportunity to identify John Doe Defendants through 22 discovery and file a motion to amend to add their proper names to this action once this 23 action proceeds to service of the action on any known defendant. 24 However, the allegations are insufficient to state a retaliation claim. “Within the 25 prison context, a viable claim of First Amendment retaliation entails five basic elements: 26 (1) An assertion that a state actor took some adverse action against an inmate (2) because 1 exercise of his First Amendment rights, and (5) the action did not reasonably advance a 2 legitimate correctional goal.” *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) 3 (footnote omitted). Plaintiff’s allegations fail to satisfy elements 2, 3, and 4 as there is no 4 indication that the adverse action was taken because of

Plaintiff's protected conduct and 5 that it chilled the exercise of his First Amendment rights. Plaintiff shall be granted leave 6 to amend to attempt to correct this deficiency if he can do so in good faith. 7 2. Claim Two: "violation of the 8th Amendment right to medical treatment 8 and care and cruel and unusual punishment as retaliation; [John Doe 1 to 3 9 transportation officers]" 10 Due to the assault by inmates, Plaintiff suffered a broken nose, cut eyebrows, 11 bruised ribs, and open cuts on his head that were bleeding; he was in severe pain, 12 disoriented and confused. Dkt. No. 1 ¶ 30. When he requested medical attention, 13 transportation Defendants refused: "the bus schedule does not allow it." Id. When 14 Plaintiff also asked for water and pain medication, defendants just laughed. Id. ¶ 31. 15 Plaintiff believes he passed out 2 to 3 times from the pain. Id. The bus appeared to have 16 made a stop at the California Institution for Men ("CIM") where Plaintiff claims he was 17 again denied medical treatment; however, the nurse at R&R did document the injuries. Id. 18 ¶ 32. Plaintiff claims Defendants "to be malicious, to inflict retaliatory pain and without 19 penological justification den[ied] the plaintiff medical treatment and allow[ed him] to 20 suffer severe pain" which constitutes cruel and unusual punishment. Id. ¶ 33. 21 Plaintiff's allegations are sufficient to state an Eighth Amendment deliberate 22 indifference to serious medical needs claim against Defendant Orosco and John Doe 23 defendants who were involved in the transport. See *Estelle v. Gamble*, 429 U.S. 97, 104 24 (1976). 25 For the same reasons as the retaliation claim under Claim One was insufficient, 26 Plaintiff's retaliation claim here is also insufficient as he fails to satisfy all five essential 1 state a retaliation claim under Claim One, then it may follow that Defendants' adverse 2 actions at CIM are part of the same retaliatory conduct. Accordingly, Plaintiff need only 3 amend to state a single retaliation claim against Defendants. 4 3. Claim Three: "violation of 1st Amendment Right and 8th Amendment right 5 retaliation for exercising a constitutional right; [all Defendants]" 6 Plaintiff claims CDCR was aware that Plaintiff had been transferred to CTF for 7 safety concerns against his life by both staff and inmates. Dkt. No. 1 ¶ 35. Plaintiff claims 8 Defendants retaliated because he exercised his right to file a complaint under the First 9 Amendment. Id. ¶ 36. He also alleges that Defendants lost his property as part of their 10 retaliation. Id. ¶ 37. Furthermore, Plaintiff claims Defendants called him a snitch in front 11 of inmates for the sole intent and purpose of placing his life and safety in danger. Id. ¶ 38. 12 He asserts that Defendants' failure to protect, deliberate indifference to safety, and denial 13 of medical care was also in retaliation. Id. ¶ 39. On January 12, 2025, Officer Orosco and 14 an unnamed sergeant came to Plaintiff at the Facility C – RJD Yard, and gave him his 15 grievance response, and said, "see we could still touch you." Id. ¶ 40. Plaintiff claims he 16 wrote to SVSP, CTF, the RJD Warden, and appeals coordinator for help identifying 17 defendants, but they refused to help. Id. ¶ 41. 18 These allegations regarding failure to protect and deliberate indifference to safety 19 and medical care are duplicative of the claims under One and Two. Furthermore, Plaintiff 20 cannot hold the CDCR liable for unconstitutional acts of its employees under a theory of 21 respondeat superior. See *Board of Cty. Comm'rs. Of Bryan Cty. v. Brown*, 520 U.S. 397, 22 403 (1997). Nor has Plaintiff

alleged that a policy was the driving force behind the 23 constitutional violation to implicate municipality liability under *Monell v. Dep't of Social 24 Servs.*, 436 U.S. 658, 690 (1978). Lastly, the Court has no jurisdiction over events that 25 took place at RJD, which lies within the jurisdiction of the Southern District of California. 26 28 U.S.C. § 84(a), (d). Accordingly, any claims regarding events and Defendants at RJD 1 including claims against Warden J. Lewis of RJD. See, e.g., Dkt. No. 1 ¶ 42. 2

3 CONCLUSION

4 For the foregoing reasons, the Court orders as follows: 5 1. All claims against Defendants based on events that took place at RJD are 6 DISMISSED without prejudice to filing in a separate action in the Southern District of 7 California. Accordingly, Defendant J. Lewis shall be terminated from this action as there 8 are no claims against him. 9 2. The retaliation claim against Defendant Orosco and John Doe Defendants is 10 DISMISSED with leave to amend. Within twenty-eight (28) days from the date this 11 order is filed, Plaintiff shall file an amended complaint using the court's form complaint to 12 correct the deficiencies described above. The amended complaint must include the caption 13 and civil case number used in this order, i.e., Case No. C 25-cv-01400 BLF (PR), and the 14 words "FIRST AMENDED COMPLAINT" on the first page. Plaintiff must answer all the 15 questions on the form in order for the action to proceed. Plaintiff is reminded that the 16 amended complaint supersedes the original complaint, and Plaintiff may not make 17 references to the original. Claims not included in the amended complaint are no longer 18 claims and defendants not named therein are no longer defendants. See *Ferdik v. Bonzelet*, 19 963 F.2d 1258, 1262 (9th Cir.1992). 20 2. Failure to respond in accordance with this order by filing an amended 21 complaint in the time provided will result in the dismissal with prejudice of the 22 deficient claims identified above for failure to state a claim for relief. This matter will 23 then proceed on the following cognizable claims against Defendant Officer Orosco 24 and John Doe Defendants: (1) failure to protect; and (2) deliberate indifference to 25 serious medical needs. Plaintiff shall be given an opportunity to identify John Doe 26 Defendants through discovery. All other Defendants will be dismissed from this 1 3. The Clerk shall enclose two copies of the court's form complaint with a copy 2 ¶ of this order. 3 IT IS SO ORDERED. 4 Dated: _July 14, 2025 fib WL

BETH LABSON FREEMAN

5 United States District Judge 6 7 8 9 10 1] 14 o 15 16 17 © 4 18 19 20 21 22 23 24 95 Order of Partial Dism. And w/LTA PRO-SE\BLF\CR.25\01400Herrera-Ramos_dw\lta 26 27