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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

S.A. THOMAS and E.L. GIPSON,

Plaintiffs,

v.

LEROY BACA, MICHAEL ANTONOVICH, YVONNE BURKE, DEANE DANA, DON KNABE, GLORIA MOLINA, ZEV YAROSLAVSKY,

Defendants.

Case No. CV 04-08448 DDP (SHx)

ORDER DENYING DEFENDANTS' MOTION TO DISMISS

[Motion filed on 02/28/05]

ENTERED
CLERK, U.S. DISTRICT COURT
MAR 24 2005
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

This matter is before the Court on the defendants' motion to dismiss the plaintiffs' first amended complaint. After reviewing the papers submitted by the parties, and considering the arguments raised therein, the Court denies the motion.

I. Background

The plaintiffs in this case, Steve Thomas and Eric Gipson, were detained in the Los Angeles County Jail during May, June, and July 2004. (First Amended Complaint ("FAC") ¶¶ 15-20.) Both plaintiffs allege that they were forced to sleep on the floor of

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AS REQUIRED BY FRCP, RULE 77(d).

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their cells during the detentions. (FAC ¶¶ 19-20.) Further, Thomas alleges that he was over-detained for two days following his ordered release date. (FAC ¶ 17.) The plaintiffs bring claims for violations of their Fourth and Fourteenth Amendment rights. (FAC ¶ 25.) They also bring their claims as representative of two classes of Los Angeles County jail inmates who have suffered identical injuries. (FAC ¶¶ 30-46.)

In their motion, the defendants argue that the plaintiffs' action is barred by the exhaustion requirement contained in the Prison Litigation Reform Act ("PLRA") of 1995, codified at 42 U.S.C. § 1997e(a). The plaintiffs respond that the PLRA's exhaustion requirement only applies to claims brought by prisoners, that the plaintiffs were not prisoners at the time this suit was filed, and therefore that the exhaustion requirement does not preclude their suit.

II. Discussion

A. Legal Standard

Dismissal under Rule 12(b)(6) is appropriate "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." (Newman v. Universal Pictures, 813 F.2d 1519, 1521-22 (9th Cir. 1987) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).) Accordingly, the Court must "accept all factual allegations of the complaint as true and draw all reasonable inferences in favor of the nonmoving party." (Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 923 (9th Cir. 2001) (citation omitted).) Nonetheless, "conclusory allegations of law and unwarranted inferences are insufficient to

defeat a motion to dismiss . . ." (Adams v. Johnson, 355 F.3d 1179, 1183 (9th Cir. 2004).)

B. The PLRA's Exhaustion Requirement Does Not Preclude Plaintiffs' Action

The PLRA included a requirement that prison inmates exhaust the available administrative remedies before bringing an action under federal law involving prison conditions. The pertinent portion provides:

> No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997e(a). The defendants have offered evidence showing that neither of the plaintiffs even commenced the administrative grievance process established by the Los Angeles County jail. Neither plaintiff turned in an Inmate Complaint Form detailing their alleged mistreatment. (De Vries Decl. ¶ 16.) Thus, the defendants argue, they are precluded by the PLRA from bringing this action.

By its own terms, the statute applies the exhaustion requirement to actions brought by "prisoner[s] confined in any jail, prison, or other correctional facility." 42 U.S.C. § 1997e(a). Under the PLRA, a prisoner is "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program." 42 U.S.C. 1997e(h).

The initial complaint in this action was filed on October 13, 2004. The last plaintiff to be released from Los Angeles County

jail was released on August 1, 2004. (Mot. at 3.) Thus, the plaintiffs were not "person[s] incarcerated or detained in any facility" at the time they brought their suit. Under the plain terms found at 42 U.S.C. 1997e(a), the plaintiffs are not barred by the PLRA's exhaustion requirement.

Further, this finding is mandated by controlling Ninth Circuit authority. In Page v. Torrey, 201 F.3d 1136 (9th Cir. 2000), the Ninth Circuit stated that the exhaustion requirement only applies to "individuals who, *at the time they seek to file their civil actions*, are detained as a result of being accused of, convicted of, or sentenced for criminal offenses." 201 F.3d at 1140 (emphasis added). In so holding, the Ninth Circuit joined other circuits in declining to apply the PLRA's exhaustion requirement to former prisoners. See Greig v. Goord, 169 F.3d 165, 167 (2d Cir. 1999) (former prisoner not required to comply with PLRA); Kerr v. Puckett, 138 F.3d 321, 323 (7th Cir. 1998) (same); Doe v. Washington County, 150 F.3d 920, 924 (8th Cir. 1998) (same).

Anticipating this plain language reading of the statute, the defendants make further arguments in support of their position, drawn from the ruling found in Morgan v. Maricopa County, 259 F.Supp.2d 985 (D.Az. 2003). In Morgan, the magistrate judge held that, notwithstanding the Ninth Circuit's holding in Page, a former inmate's suit was barred by the PLRA's exhaustion requirement. The judge reasoned (and the present defendants argue) that two recent Supreme Court decisions interpreting the PLRA render the abovementioned circuit cases anachronistic. He further reasoned that including former prisoners within the PLRA's ambit would best serve the ends Congress sought to achieve in passing the amendment.

This Court finds this logic unpersuasive. While both of the referenced Supreme Court opinions, Booth v. Churner, 532 U.S. 731 (2001), and Porter v. Nussle, 534 U.S. 516 (2002), interpret the PLRA, neither involve the applicability of the exhaustion requirement to former prisoners. In Booth, the Court addressed the issue of whether an inmate seeking money damages must exhaust the prison's administrative process when the process does not provide that particular form of relief. The Court held that exhaustion was still required. Then, in Porter, the Court confronted the question of whether the PLRA's exhaustion requirement applied to complaints arising from single incidents, such as the use of excessive force against a single inmate, as opposed to complaints regarding general prison conditions. The Court held that the PLRA applied in both types of cases.

The defendants claim that the Supreme Court's "stringent" application of the exhaustion provision in the two cases effectively eviscerates the holdings in Page, Greig, Kerr, and Doe. This argument overlooks the fact that neither Booth nor Porter dealt with the PLRA's effect on former prisoners. Additionally, the Court does not agree with the defendants' general argument that, in applying the PLRA "stringently," the Supreme Court endorsed an interpretive practice whereby courts expansively read the PLRA to apply beyond the limits contained in its unambiguous text.

Further, the Court does not read these cases to be particularly stringent and broad applications of the exhaustion requirements. For example, in Porter the Supreme Court's holding was "in line with the text and purpose of the PLRA, our precedent

in point, and the weight of lower court authority." 534 U.S. at 986. In reaching its conclusion, the Court reached back to its pre-PLRA decision in McCarthy v. Bronson, 500 U.S. 136 (1991), in which it held that the statutory predecessor to the PLRA applied to both challenges to general prison conditions and challenges to isolated incidents of excessive force. Thus, the Court merely followed a rule that it had established prior to the enactment of the PLRA; it did not, as the defendants contend, consult the congressional intent in order to expand the reach of the statute beyond its plain textual meaning.

The defendants invite this Court to follow what is decidedly the minority view advanced in the Morgan decision. In addition to the circuit court holdings in Page, Greig, Kerr, and Doe, the majority of the district courts to consider this issue have held that 42 U.S.C. § 1997e(a) does not apply to suits brought by former inmates. See Ahmed v. Dragovich, 297 F.3d 201 (3rd Cir. 2002) (PLRA's exhaustion requirement does not apply to suit brought by former prisoner); Abdul-Akbar v. McKelvie, 239 F.3d 307 (3rd Cir. 2001) (same); Harris v. Garner, 216 F.3d 970 (11th Cir. 2000) (same); Kritenbrink v. Crawford, 313 F.Supp.2d 1043 (D.Nev. 2004) (same); Smith v. Franklin County, 227 F.Supp.2d 667 (E.D.Ky. 2002) (same); and Burton v. City of Philadelphia, 121 F.Supp.2d 810 (E.D.Pa. 2000) (same). But see Zehner v. Trigg, 952 F.Supp. 1318 (S.D.Ind. 1997) (PLRA barred unexhausted claims brought by former prisoners).

Accordingly, this Court finds that the PLRA does not apply to the instant action, and therefore the Court denies the defendants' motion to dismiss. This Court is not empowered to expand the

meaning of a congressional enactment in order to accomplish policy objectives that lie beyond the plain meaning of the text. The words contained in the PLRA are unambiguous. The exhaustion requirement applies to those actions brought by "a prisoner confined in any jail, prison, or other correctional facility." 42 U.S.C. § 1997e(a). Had Congress intended to preclude suits brought by former inmates, it could have written the exhaustion provision to do so. It did not. [1]

III. Conclusion

For the foregoing reasons, the Court denies the defendants' motion to dismiss.

IT IS SO ORDERED.

Dated: 3-23-05

DEAN D. PREGERSON
United States District Judge

[1] In the opening and concluding paragraphs of their opposition, the plaintiffs request that the Court impose sanctions on the defense counsel for the filing of this motion. This request is denied. While the Court does not find the legal arguments presented in the defendants' motion persuasive, they are clearly not frivolous. Indeed, as noted above, two district courts have been swayed by such reasoning.