UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:10-CV-1649-SVW-JEM	Date	December 19, 2012
Title	Mary Amador, et al. v. Leroy D. Baca, et al.		

JS-5

Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE	
Paul M. Cruz	N/A	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
N/A	N/A

Proceedings: IN CHAMBERS ORDER Re MOTION TO DISMISS [121]

I. INTRODUCTION

On January 28, 2011, Plaintiffs Mary Amador, Alisa Battiste, Felice Cholewiak, Evangelina Madrid, Lora Barranca, Diana Paiz, and Diane Vigil ("Plaintiffs") filed their Second Amended Complaint ("SAC") against Defendants County of Los Angeles, Los Angeles County Sheriff's Department ("LASD"), Sherriff Leroy Baca, and seven LASD Deputies, alleging two violations of 42 U.S.C. § 1983—one for violations of the Fourth Amendment and the other for violations of the Equal Protection Clause of the Fourteenth Amendent—and various related state law claims, each arising out of strip-search policies allegedly in place at LASD's Century Regional Detention Facility ("CRDF") located in Lynwood, California. (Dckt. 109).[1] On December 27, 2011, after receiving briefing from the parties, the Court moved this action to its inactive calendar, pending the Supreme Court's decision in Florence v. Board of Chosen Freeholders of the County of Burlington, 132 S.Ct. 1510 (2012). At that time, there were two motions pending before this Court: Plaintiffs' motion for class certification (Dckt. 59) and Defendants' motion to dismiss the SAC (Dckt. 121).

[1] Defendants opposed Plaintiff's motion to amend; after holding a hearing on the matter, the Court granted the motion. (Dckt. 113). The SAC is the operative complaint.

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The Supreme Court handed down its decision in Florence, providing considerable guidance to the instant case. The Court therefore finds that this matter is ready to proceed, and hereby MOVES this action to its active calendar.

Moreover, for the reasons explained in this Order, the Court DENIES Defendants' motion to dismiss as to Plaintiff's Fourth and Fourteenth Amendment causes of action and BIFURCATES the state-law claims. The Court will rule on the motion for class certification after ruling on motions for summary judgment. Finally, the Court ORDERS the parties to appear for a status conference on January 7, 2013 at 3:00 p.m.

II. MOTION TO DISMISS: EXHAUSTION UNDER THE PLRA

Defendants' motion Plaintiffs' federal claims is based solely on their argument that six of the seven plaintiffs—Battiste, Cholewiak, Madrid, Barranca, Paiz, and Vigil—are barred from bringing their claims in this Court because they failed to properly exhaust their claims within the prison as required by the Prison Litigation Reform Act (PLRA). For the reasons explained below, the PLRA does not bar any of the named plaintiffs from bringing suit.

A. Plaintiff Amador

The PLRA provides that "[n]o 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). However, it is "clear from the express language of the [PLRA] that [the statute's exhaustion requirement applies] only to 'prisoners.'" Page v. Torrey, 201 F.3d 1136, 1139 (9th Cir. 2000) (citing 42 U.S.C. § 1997e(a)). Thus, only those individuals who are prisoners "at the time they file suit must comply with the [PLRA's] exhaustion requirement[.]" Talamantes v. Leyva, 575 F.3d 1021, 1024 (9th Cir. 2009). Individuals who have been released from prison altogether need not exhaust their claims within the available administrative avenues before pressing them in a federal court. Id.; accord Norton v. City of Marietta, 432 F.3d 1145, 1149-51(10th Cir. 2005) (per curiam); Nerness v. Johnson, 401 F.3d 874, 876 (8th Cir. 2005); Ahmed v. Dragovich, 297 F.3d 201, 210 (3d Cir. 2002).

The PLRA defines a prisoner as "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) (emphasis added); see also Page, 201 F.3d at 1139 ("[T]o fall within the definition of 'prisoner,' the individual in question must be *currently detained* as a result of accusation, conviction, or

sentence for a criminal offense.") (emphasis added). Defendants do not dispute that Amador was not a "prisoner" within the meaning of the PLRA at the time the initial complaint filed on March 5, 2010. Thus, Amador was not required to exhaust her claims within the administrative avenues available at CRDF before bringing her claims in this Court.

B. Plaintiffs Battiste, Cholewiak, and Madrid

Plaintiffs Battiste, Cholewiak, and Madrid were added to this action when Plaintiffs filed their Second Amended Complaint on January 13, 2011, joining Amador as additional representative plaintiffs for the Rule 23(b)(3) damages class. It is undisputed that Battiste, Cholewiak, and Madrid were not in prison (at CRDF or elsewhere) when they were added to this action on January 13, 2011. Defendants contend, however, that the PLRA's exhaustion requirement applies to them because they were "prisoners" when the initial complaint was filed on March 5, 2010.

The Court has found only one case that has considered the question of whether plaintiffs subsequently added to a suit must have exhausted their claims at the time an initial complaint was filed. In Riggs v. Valdez, the Court held that the PLRA required newly added plaintiffs to have exhausted their claims by the *time they were added to the complaint*, not at the time the initial complaint was filed. No. 1:09-CV-010-BLW, 2010 WL 4117085, at *5 (D. Idaho Oct. 18, 2010). Noting that the purpose of the PLRA was, in part, to "reduce the quantity and increase the quality of prisoner lawsuits," the Court reasoned that

> If prisoners cannot amend with newly exhausted claims and are instead directed to start a new action, the quantity of prison condition lawsuits would be increased, not decreased, and the quality of each of those piecemeal lawsuits would likely tack in a negative direction. Or, if the cases are consolidated, the same practical result is achieved as amendment but with the added time and expense of starting a new proceeding. Applying Defendants' position to this case would presumably have required the filing of a different complaint under a new case number that could then be consolidated, which would waste time and resources.

Id.; see also Vaden v. Summerhill, 449 F.3d 1047, 1050 (9th Cir. 2006) ("Beyond doubt, Congress enacted § 1997e(a) to reduce the quantity and improve the quality of prisoner suits . . . .") (internal citations and quotation marks omitted).

The same reasoning applies here. Defendants do not dispute that Battiste, Cholewiak, and Madrid were not in prison on the date they were added to this action. They could have filed their own action in this Court on that date, which would have then been consolidated with the current action,

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wasting time and resources. Thus, because Battiste, Cholewiak, and Madrid were not in prison on the date they were added to this action, the PLRA's exhaustion requirement did not apply to them. See also Rhodes v. Robinson, 621 F.3d 1002, 1007 (9th Cir. 2010) (holding that an inmate may amend a complaint to add new claims exhausted after the date on which the original complaint was filed but before the date the amended complaint was submitted); Barnes v. Briley, 420 F.3d 673, 678 (7th Cir. 2006) ("The filing of the amended complaint was the functional equivalent of filing a new complaint . . . and it was only at that time that it became necessary to have exhausted all of the administrative remedies . . . .").

C. Plaintiffs Barranca, Paiz, and Vigil

Plaintiffs Barranca, Paiz, and Vigil were added to this action when Plaintiffs filed their First Amended Complaint on September 10, 2010, joining Amador as representative plaintiffs for the Rule 23(b)(3) damages class, and as representatives plaintiffs for a new class requesting injunctive relief under Rule 23(b)(2). It is undisputed that Barranca, Paiz, and Vigil were in custody when they were added to this action on September 10, 2010.[2] Defendants contend that they did not exhaust their claims pursuant to the PLRA.

"There is no question that exhaustion is mandatory under the PLRA and that unexhausted claims cannot be brought in court." Jones v. Bock, 549 U.S. 199, 211 (2007); see also Albino v. Baca, 697 F.3d 1023 (9th Cir. 2012) (noting that the PLRA requires "exhaustion of the correctional facilities' administrative remedies."). Exhaustion serves two purposes: first, it gives an administrative agency the "'opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court[.]'" Albino, 697 F.3d 1023 (quoting Woodford v. Ngo, 548 U.S. 81, 89 (2006)). Second, "'exhaustion promotes efficiency. Claims generally can be resolved much more quickly and economically in proceedings before an agency than in litigation in federal court.'" Albino, 697 F.3d 1023 (quoting Woodford, 548 U.S. at 89). A prisoner must "'complete the administrative review process in accordance with the applicable procedural rules, including deadlines, as a precondition to bringing suit in federal court.'" Marella v. Terhune, 568 F.3d 1024, 1027 (9th Cir. 2009) (quoting Woodford, 548 U.S. at 88). "The level of detail necessary in a grievance to comply with the grievance procedures will vary from system to system and claim to claim, but it is the prison's requirements, and not the PLRA, that define the boundaries of proper exhaustion." Akhtar v. Mesa, 11-16629, 2012 WL 5383038 (9th Cir. Nov. 5, 2012) (quoting Jones, 549 U.S. at 218).

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[2] As discussed above, see supra Part II.B, the relevant date is whether these plaintiffs exhausted their claims by the time they were added to the complaint on September 10, 2010.

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Exhaustion under the PLRA is an affirmative defense, and the "'burden of establishing nonexhaustion therefore falls on defendants.'" Albino, 697 F.3d 1023 (quoting Wyatt v. Terhune, 315 F.3d 1108, 1112 (9th Cir. 2003)). To meet their burden, Defendants must show 1) that a grievance procedure existed and 2) that plaintiffs did not exhaust the grievance procedure. Id.; see also Valoff, 422 F.3d at 936-37 ("As we have concluded that there can be no 'absence of exhaustion' unless *some* relief remains 'available,' a defendant must demonstrate that pertinent relief remained available, whether at unexhausted levels of the grievance process or through awaiting the results of the relief already granted as a result of that process."). Relevant evidence demonstrating that a grievance procedure existed includes "statutes, regulations, and other official directives that explain the scope of the administrative review process; documentary or testimonial evidence from prison officials who administer the review process; and information provided to the prisoner concerning the operation of the grievance procedure in this case . . . ." Valoff, 422 F.3d at 937; see also Albino, 697 F.3d at 1032 (noting that a defendant had met his burden of demonstrating that grievance procedures were available by attaching a manual that described the procedure).

In determining whether or not a defendant has met its burden, "the court may look beyond the pleadings and decide disputed issues of fact." Wyatt, 315 F.3d at 1119-20; see also Bryant v. Rich, 530 F.3d 1368, 1376-77 (11th Cir. 2008) (holding that a court must decide facts on a motion for failure to exhaust and noting that "[r]equiring jury trials to resolve factual disputes over the preliminary issue of exhaustion would be a novel innovation for a matter in abatement and would unnecessarily undermine Congress's intent in enacting the PLRA's exhaustion requirement: that is, to reduce the quantity and improve the quality of prisoner suits") (internal citations, quotation marks, and footnotes omitted).

Defendants have not met their burden. They have failed to provide a single "statute, regulation, or other official directive" that explains the scope of the administrative review process at CRDF. Instead, they rely upon the declarations of Deputy Janette Leo, a LASD deputy assigned to the Legal Unit at CRDF, and Deputy Janet Barragan, a LASD operations deputy assigned to CRDF. In their declarations, both deputies described the grievance procedures at CRDF after stating that they are "familiar with the administrative remedies procedure for inmates . . . at CRDF." However, their depositions demonstrate that they have little, if any, familiarity with the procedures: Deputy Leo admits that she had "no responsibility" for processing inmate complaints; rather, submitted complaints were handled by the "watch commander." Leo Dep. 19:4-19:9; 25:2-25:8. Deputy Leo's only involvement in the complaint process came when prisoners made requests "pertaining towards legal," such as requests for the use of the law library, legal forms, or information on the status of certain court orders. Leo Dep.

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24:12-24:25.[3] Deputy Barragan is even less involved in handling prisoner complaints: her primary job was to oversee staffing at CRDF and deal with personnel (i.e. staff) logistics and operations. Barragan Dep. 11:15-11:18. She had no direct responsibility for resolving administrative complaints; on occasion, she was asked by her supervisor to resolve an inmate complaint. Barragan Dep. 14:15-15:15. In short, although their declarations say that they are familiar with the administrative remedies procedure at CRDF, the deputies' depositions demonstrate that they are not. Indeed, Deputy Leo explicitly testified that she was not aware of any written policies, rules or regulations regarding the process of inmate complaints. Leo Dep. 26:18-27:25. Deputy Barragan makes a vague reference to an unspecified unit order that she claims describes the procedure for filing a complaint, but no such order was provided by Defendants. Barragan Dep. 16:7-17:19.

Defendants argue that the declarations were submitted for the purpose of "establishing that there were no records of complaints by certain Plaintiffs in any of LASD's computer databases in which complaints are logged or stored." According to Defendants, the deputies are familiar with the method of reviewing LASD files and databases for records of administrative complaints and retrieving such records; and when they searched the files and databases they found no complaints from Plaintiffs Barranca, Paiz, and Vigil related to the strip-searches at issue. According to Defendants, "an exhaustive knowledge of the administrative remedy procedure is not necessary" for this purpose. Defendants' argument highlights their evidentiary shortcoming: although the deputies may be qualified to run a search of the database system, they are, by Defendants' own admission, *not* qualified to testify what, if any, procedures are in place at CRDF for processing inmate complaints. Defendants had an affirmative duty to bring forth evidence that a *grievance procedure* existed, and evidence that a complaint was not in a database fails to do so.

The only other evidence that Defendants provide to demonstrate that a grievance procedure is in place at CRDF is a copy of the complaint form allegedly provided to inmates, including one filled out by Plaintiff Barranca that was in the LASD database. See Ex. A to the Decl. of Janettee Leo. This form does nothing more than demonstrate that the form exists and that it was in the database: it does not demonstrate that there is a procedure in place for providing the forms to inmates, collecting them, and responding to complaints. In short, Defendants have failed to meet their burden of demonstrating that a grievance procedure existed. Cf. Albino, 697 F.3d at 1032 (noting that a defendant had met his burden of demonstrating that grievance procedures were available by attaching a manual that described the

[3] Deputy Leo's role at CRDF is limited to handling civil claims or lawsuits filed against the LASD—dealing primarily with complaints and court orders that come from an inmate's *attorney*, not from inmates themselves. Leo Dep. 15:22-18:2.

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procedure); see also Johnson v. Testman, 380 F.3d 691, 697 (2d Cir. 2004) (remanding to consider whether the regulations covering the grievance procedures were "sufficiently confusing so that a prisoner ... might reasonably have believed that he could raise his claim against [the defendant] as part of his defense in disciplinary proceedings"); Brown v. Croak, 312 F.3d 109, 113 (3d Cir. 2002) (relying on directives given by prison officials to the inmate regarding the grievance procedure because " '[a]vailable' means 'capable of use; at hand,' and if prison officials inform the prisoner that he cannot file a grievance, the formal grievance proceeding ... was never 'available' ... within the meaning of 42 U.S.C. § 1997e").

Because Defendants have failed to meet their burden of demonstrating that grievance procedures existed at CRDF, their non-exhaustion defense fails. Thus, the motion to dismiss Plaintiffs Barranaca, Paiz, and Vigil for failure to exhaust is DENIED.

III. CLASS CERTIFICATION

Under Rule 23, the Court must determine whether to certify the action as a class action "[a]t an early practicable time after a person sues or is sued as a class representative." Fed. R. Civ. P. 23(c)(1)(A). However, where "it is more practicable to do so and where the parties will not suffer significant prejudice—the district court has discretion to rule on a motion for summary judgment before it decides the certification issue." Wright v. Schock, 742 F.2d 541, 544-45 (9th Cir. 1984); see also Arnold v. Arizona Dept. of Pub. Safety, 233 F.R.D. 537, 541 (D. Ariz. 2005) (noting that Congress amended Rule 23 to require class certification "at an early practicable time" to account for the "judicial practice of ruling on pretrial motions, including motions for summary judgment, before determining whether to certify a class"). Because Plaintiff's motion for class certification will be substantially clarified by a motion for summary judgment, the Court will rule on the motion after considering the parties' motions for summary judgment.

IV. CONCLUSION

The Court hereby MOVES this case to its active calendar. Furthermore, for the reasons explained in this Order, the Court DENIES Defendants' motion to dismiss as to Plaintiff's Fourth and Fourteenth Amendment causes of action and BIFURCATES the state-law claims, to be tried at a later date. The Court will rule on the motion for class certification after ruling on motions for summary judgment. Finally, the Court ORDERS the parties to appear for a status conference on January 7, 2013 at 1:30 p.m.

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