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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

ADONAI EL-SHADDAI,  
  
Plaintiff,  
  
v.  
  
JEANNE WOODFORD, Director,  
California Department of  
Corrections, and D.L.  
RUNNELS, Warden, High Desert  
State Prison,  
  
Defendants.

NO. CV-08-2429-EFS (PC)

**ORDER DIRECTING U.S. MARSHAL  
TO SERVE COMPLAINT AND  
PROVIDING PLAINTIFF WITH  
ADVISEMENTS**

Before the Court is *pro se* state prisoner Plaintiff Adonai El-Shaddai's Amended Complaint, alleging various constitutional violations under 42 U.S.C. § 1983. ([Ct. Rec. 18.](#)) The Court previously determined that Plaintiff's Complaint states plausible First and Fourteenth Amendment claims under 42 U.S.C. § 1983 and ordered Plaintiff to prepare and return the necessary service documents within forty-five (45) days. ([Ct. Rec. 19.](#)) Plaintiff has done so. ([Ct. Rec. 20.](#))

Accordingly, **IT IS HEREBY ORDERED:**

1. The **Clerk of Court** shall forward the following documents to the U.S. Marshals Service for each Defendant:
  - a. One completed and issued summons;
  - b. One completed USM-285 form;

ORDER \* 1

- c. One copy of the complaint;
- d. One copy of this Order;
- e. Two copies of a Waiver of Service;
- f. One notice of lawsuit consistent with Federal Rule of Civil Procedure 4(d)(1); and
- g. One request for waiver of service consistent with Federal Rule of Civil Procedure 4(d)(1).

2. The **Clerk of Court** shall also immediately forward the following **additional** documents to the U.S. Marshals Service:

- a. an extra copy of the complaint; and
- b. an extra copy of this Order.

3. The **U.S. Marshals Service** shall serve **each** Defendant in compliance with Federal Rule of Civil Procedure 4.

a. First, in order to effectuate service, the United States Marshal, in compliance with Rule 4(d), shall send the following documents, by first class mail: the summons, the complaint, this Order, a request for waiver of service of summons, two copies of the Waiver of Service, and a return envelope, postage prepaid, addressed to the sender. The costs of mailing shall be advanced by the United States.

b. Next, if a Defendant does not return the Waiver of Service within the appropriate time period, the U.S. Marshals Service shall personally serve that Defendant, in compliance with Rule 4(e)-(i). The U.S. Marshals Service shall make the necessary attempts to effectuate

1           such personal service until service is effected or, if  
2           necessary, obtain direction from the Court or the Legal  
3           Affairs Division (Litigation Office Special Investigator)  
4           of the California Department of Corrections and  
5           Rehabilitation (CDCR). The U.S. Marshals Service shall  
6           also command all necessary assistance from the California  
7           Department of Corrections and Rehabilitation (CDCR) to  
8           execute this Order.

9           4. The U.S. Marshals Service shall file upon receipt the returned  
10          waivers of service, the requests for waiver of service that are returned  
11          as undelivered, and returns of service. In addition, if necessary, the  
12          U.S. Marshals Service shall complete and file the USM-285 form. Costs  
13          of service will then be taxed against the personally-served Defendant in  
14          accordance with Federal Rule of Civil Procedure 4(d)(2).

15          5. Defendants shall file an answer or otherwise respond to  
16          Plaintiff's complaint within sixty (60) days after mailing (if formal  
17          service is waived), forty-five (45) days if service is not waived.  
18          Failure to so respond may result in entry of a default judgment.

19          6. **NOTICE - WARNING:** *Pro se* Plaintiff is warned that certain  
20          motions can result in the dismissal of all or part of his case; i.e.,  
21          "dispositive motions." See *Klinge v. Eikenberry*, 849 F.2d 409, 411  
22          (9th Cir. 1988); *Rand v. Rowland*, 154 F.3d 952, 962 (9th Cir. 1998).  
23          Such dispositive motions may be captioned as motions to dismiss or  
24          motions for summary judgment, though other captions may also be used.

25          Generally, the Court must grant a Defendant's motion to dismiss for  
26          failure to state a claim that is filed under Federal Rule of Civil

1 Procedure 12(b)(6) if it appears beyond doubt that Plaintiff can prove  
2 no set of facts that would plausibly entitle him to relief. While the  
3 Court assumes that Plaintiff's allegations are true when applying this  
4 standard, conclusory allegations, without more, are insufficient to  
5 defeat a motion to dismiss for failure to state a claim.

6 A Defendant may also file a motion to dismiss for failure to exhaust  
7 administrative remedies as to one or more claims in the complaint. The  
8 failure to exhaust administrative remedies is subject to an unenumerated  
9 Rule 12(b) motion to dismiss. *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (9th  
10 Cir. 2003) (citing *Riza v. Int'l Longshoremen's & Warehousemen's Union*,  
11 837 F.2d 365, 368 (9th Cir. 1988)). "In deciding a motion to dismiss for  
12 failure to exhaust nonjudicial remedies, the court may look beyond the  
13 pleadings and decide disputed issues of fact." *Id.* at 1119-20 (quoting  
14 *Ritza*, 837 F.2d at 368). Accordingly, Plaintiff must oppose the motion  
15 setting forth specific facts in declaration(s) and other evidence  
16 regarding the exhaustion of administrative remedies, rather than simply  
17 rely on allegations in the complaint. See FED. R. CIV. P. 43(e); *Ritza*,  
18 837 F.2d at 369. If the Court concludes that Plaintiff did not exhaust  
19 administrative remedies, the case will be dismissed without prejudice.  
20 *Wyatt*, 837 F.3d at 1120. This means that the case will end. If  
21 Plaintiff exhausts administrative remedies at a later date, he may file  
22 the case as a new action.

23 The Court must grant a summary judgment motion filed under Federal  
24 Rule of Civil Procedure 56 when there is no genuine issue of material  
25 fact and the moving party is entitled to judgment as a matter of law.  
26 This means the Court will find in favor of the moving party if there is

1 no real dispute about any fact that affects the result of the case and  
2 if the moving party is entitled to judgment as a matter of law. This  
3 will end the case. When a party makes a motion for summary judgment that  
4 is properly supported by declarations or other sworn testimony, the  
5 opposing party cannot simply rely on what his complaint or answer says.  
6 Instead, if Plaintiff is the opposing party, he must show Defendant(s)'  
7 facts are genuinely disputed in one or more of the following ways: (1)  
8 Plaintiff may rely upon statements made under penalty of perjury in the  
9 complaint **if** the complaint shows that Plaintiff has personal knowledge  
10 of the matters stated and **if** Plaintiff calls the Court's attention to  
11 those parts of the complaint upon which Plaintiff relies; (2) Plaintiff  
12 may serve and file affidavits or declarations setting forth the facts  
13 which Plaintiff believes prove Plaintiff's claims (the persons who sign  
14 the affidavit or declaration must have personal knowledge of the facts  
15 stated); (3) Plaintiff may rely upon written records but Plaintiff must  
16 prove that the records are what Plaintiff claims they are; and (4)  
17 Plaintiff may also rely upon all or any part of the transcript of one or  
18 more depositions, answers to interrogatories, or admissions obtained in  
19 this proceeding. Should Plaintiff fail to contradict Defendants' motion  
20 with affidavits, declarations, or other evidence, Defendants' evidence  
21 will be taken as truth, and final judgment may be entered without a full  
22 trial. See FED. R. CIV. P. 56(e). Rule 56 sets forth what a party must  
23 do in order to oppose a summary judgment motion. Local Rule 56-260 also  
24 requires, in addition, that a party include as part of its opposition to  
25 a summary judgment motion a statement of material facts. If summary  
26 judgment is granted, the case will be dismissed and there will be no  
trial.

