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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

REMON SHIELDS,

Plaintiff,

No. CIV S-11-0015 JAM EFB P

vs.

D. FOSTON, et al.,

Defendants.

ORDER

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Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Although plaintiff has paid the filing fee, he is confined at California State Prison, Sacramento, and “seeks redress from a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). Accordingly, the court is required to review plaintiff’s complaint pursuant to § 1915A. “On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b).

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1 Plaintiff names D. Foston, P. Miller, James Walker, J.E. Mayfield, and A. Taylor as  
2 defendants. The court finds that for the limited purposes of 28 U.S.C. § 1915A screening, the  
3 complaint states potentially cognizable claims for relief against all defendants under the First  
4 Amendment and the Religious Land Use and Institutionalized Persons Act of 2000.

5 Accordingly, it hereby is ordered that:

6 1. The Clerk of the Court shall send to plaintiff a completed summons, a copy of the  
7 endorsed complaint, the Notice of Availability of a Magistrate Judge to Exercise Jurisdiction, a  
8 form for Consent/Decline to Proceed Before a United States Magistrate Judge, a copy of the  
9 Local Rules of Court, and a copy of this order.

10 2. Service of process shall be completed within one hundred twenty (120) days. Plaintiff  
11 is cautioned that this action or any unserved defendant may be dismissed if service of process is  
12 not accomplished within one hundred twenty (120) days from the date that the complaint is filed.  
13 *See Fed. R. Civ. P. 4(m).*

14 3. Plaintiff shall serve a copy of this order concurrently with service of process and file  
15 with the Clerk a certificate of such service.

16 4. On or before March 19, 2012, the parties shall file status reports<sup>1</sup> briefly describing  
17 the case and addressing the following:

- 18 a. Progress in service of process;
- 19 b. Possible joinder of additional parties;
- 20 c. Expected or desired amendment of pleadings;
- 21 d. Jurisdiction and venue;
- 22 e. Anticipated motions and their scheduling;
- 23 f. Cut-off dates for discovery (including dates for the disclosure of expert

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26 <sup>1</sup> The parties are encouraged, when possible, to file a joint status report.

1 witnesses) and law and motion, and dates for pretrial conference and trial;<sup>2</sup>

2 g. Special procedures, if any;

3 h. Estimated trial time;

4 I. Modifications of standard pretrial procedures due to the simplicity or  
5 complexity of the proceedings;

6 j. Whether the case is related to any other cases, including any bankruptcy cases;

7 k. Whether a settlement conference should be scheduled;

8 l. Whether counsel will stipulate to the magistrate judge assigned to this matter  
9 acting as settlement judge and waiving disqualification by virtue of his so acting, or whether they  
10 prefer to have a settlement conference conducted before another judge; and

11 m. Any other matters that may add to the just and expeditious disposition of this  
12 matter.

13 5. Plaintiff and counsel are reminded of their continuing duty to notify chambers  
14 immediately of any settlement or other disposition. *See* L.R. 160. In addition, the parties are  
15 hereby informed that unless otherwise ordered, all motions to dismiss, motions for summary  
16 judgment, discovery motions, and motions made under the authority of Fed. R. Civ. P. 7, 11, 12,  
17 15, 41, 55, 56, 59 and 60, and Local Rule (“L.R.”) 110 shall be briefed in accordance with L.R.  
18 230(l). Failure to timely file an opposition or statement of no opposition to a motion may be  
19 deemed a waiver of opposition to the motion and may result in the imposition of sanctions. L.R.  
20 230(l). Opposition to all other motions need be filed only as directed by the court.

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22 <sup>2</sup> In completing this portion of the status report(s), the parties are advised that Judge  
23 Brennan’s typical pretrial schedule requires (1) initial expert disclosures to be made within  
24 approximately sixty (60) days after filing the initial status report(s); (2) motions to compel  
25 discovery to be submitted for decision within approximately sixty (60) days after the expert  
26 disclosure deadline; (3) discovery to be completed within approximately thirty (30) days after  
the motion to compel deadline; (4) all non-discovery law and motion to be submitted for decision  
within approximately sixty (60) days after the discovery completion date; (5) a final pretrial  
conference to be held approximately ninety (90) days after the non-discovery law and motion  
deadline; and (6) trial to commence approximately ninety (90) days after the final pretrial  
conference.

1           6. The parties may consent to have this case before the assigned magistrate judge for all  
2 purposes. *See* 28 U.S.C. § 636(c). A “Notice of Availability of a Magistrate Judge to Exercise  
3 Jurisdiction” is attached. All parties shall complete and execute the form and file it with the  
4 Clerk.

5           7. If plaintiff is released from prison while this case is pending, any party may request  
6 application of the other provisions of L.R. 230 in lieu of L.R. 230(1). Until such a motion is  
7 granted, L.R. 230(1) will remain in effect regardless of plaintiff’s custodial status. *See* L.R.  
8 102(d).

9           8. As required by *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003), the court  
10 hereby informs plaintiff of the following with respect to opposing a motion to dismiss and/or for  
11 summary judgment for failure to exhaust available administrative remedies. Such a motion is a  
12 request that the court dismiss without prejudice any unexhausted claims. The moving party may  
13 submit affidavits or declarations under penalty of perjury and admissible documents in support  
14 of its motion. Plaintiff may file declarations under penalty of perjury and admissible documents  
15 in support of his opposition. Plaintiff may rely on his own statements made under penalty of  
16 perjury in the complaint if the complaint shows that he has personal knowledge of the matters  
17 stated, and plaintiff specifies the parts of the complaint on which he relies. Affidavits or  
18 declarations must be sworn to by persons who have personal knowledge of relevant matters. If  
19 plaintiff seeks to rely on written records, he must prove that the records are what he asserts them  
20 to be. If plaintiff fails to contradict defendant’s evidence with admissible evidence, the court  
21 may rely on defendant’s evidence. If plaintiff does not file a written opposition to the motion,  
22 the court may consider the failure to act as a waiver of opposition to the motion. *See* L.R. 230(1).  
23 If the court grants defendant’s motion, the unexhausted claims will be dismissed without  
24 prejudice.

25           9. As required by the appellate court in *Rand v. Rowland*, 154 F.3d 952, 957 (9th Cir.  
26 1998) (en banc), *cert. denied*, 527 U.S. 1035 (1999), and *Klinge v. Eikenberry*, 849 F.2d 409,

1 411-412 (9th Cir. 1988), the court informs plaintiff of the following with respect to opposing a  
2 motion for summary judgment under Fed. R. Civ. P. 56: Such a motion is a request that the  
3 court grant judgment in defendants' favor without trial. A motion for summary judgment will  
4 set forth the facts that defendants assert are not reasonably subject to dispute and that entitle  
5 them to judgment under applicable law. To oppose a motion for summary judgment, plaintiff  
6 must show proof of his claims. To do this, he may rely upon statements made in the complaint  
7 under penalty of perjury if the complaint shows that plaintiff has personal knowledge of the  
8 matters stated and plaintiff specifies the parts of the complaint upon which he relies. Plaintiff  
9 also may file one or more affidavits or declarations setting forth the facts that plaintiff believes  
10 prove his claims, as long as the person who signs it has personal knowledge of the facts stated.  
11 Plaintiff may rely on written records, but he must prove they are what he asserts them to be.  
12 Plaintiff may rely on all or any part of responses to discovery propounded in this case, i.e.,  
13 answers to interrogatories, admissions and deposition transcripts. If plaintiff fails to contradict  
14 defendants' evidence with counter-affidavits or other admissible evidence, the court may accept  
15 defendants' evidence as true and grant the motion. If there is good reason why such facts are not  
16 available to plaintiff when he is required to oppose a motion for summary judgment, the court  
17 will consider a request to postpone considering the motion. If plaintiff does not file a written  
18 opposition to the motion or a request to postpone consideration of it, the court may consider the  
19 failure to act as a waiver of opposition to the defendants' motion. *See* L.R. 230(1). If the court  
20 grants defendants' motion, whether opposed or unopposed, judgment will be entered for  
21 defendants without a trial and the case will be closed.

22 10. Each party shall keep the court informed of a current address at all times while this  
23 action is pending. Any address change must be reported promptly to the court in a separate  
24 document captioned for this case and must be entitled "Notice of Change of Address." A notice  
25 of address change must be properly served on other parties. Service of documents at the address  
26 on record for a party is fully effective. *See* L.R. 182(f). A party's failure to inform the court of a

1 change of address may result in the imposition of sanctions, including dismissal of the action..

2 11. Failing to obey federal or local rules, or any order of this court, “may be grounds for  
3 imposition by the Court of any and all sanctions authorized by statute or Rule or within the  
4 inherent power of the Court,” including dismissal of this action. L.R. 110. Even though the  
5 court will construe pro se pleadings liberally, pro se litigants must comply with all procedural  
6 rules.

7 Dated: November 29, 2011.

  
8 EDMUND F. BRENNAN  
9 UNITED STATES MAGISTRATE JUDGE  
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