

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
EUREKA DIVISION

DAVID SCOTT HARRISON,  
Plaintiff,  
v.  
S. KERNAN, et al.,  
Defendants.

Case No. 16-cv-07103-NJV

ORDER OF SERVICE, ORDER  
SETTING CASE MANAGEMENT  
CONFERENCE

Plaintiff, a state prisoner, has filed a pro se civil rights complaint pursuant 42 U.S.C. § 1983. The court has denied his opposition to the removal of the action to this court. (Doc. 12.)

**DISCUSSION**

**Standard of Review**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the statement need only “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.”” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to

1 provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and  
2 a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must  
3 be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*,  
4 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a  
5 claim to relief that is plausible on its face.” *Id.* at 570. The United States Supreme Court has  
6 recently explained the “plausible on its face” standard of *Twombly*: “While legal conclusions can  
7 provide the framework of a complaint, they must be supported by factual allegations. When there  
8 are well-pleaded factual allegations, a court should assume their veracity and then determine  
9 whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679  
10 (2009).

11 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)  
12 that a right secured by the Constitution or laws of the United States was violated, and (2) that the  
13 alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*,  
14 487 U.S. 42, 48 (1988).

15 **Controlling Law**

16 In this action, Plaintiff alleges that he has been deprived of his right to the equal protection  
17 of the law as guaranteed by the Fourteenth Amendment to the United States Constitution.

18 In *Turner v. Safley*, 482 U.S. 78, 89 (1987), the Court held that when a prison regulation  
19 [or practice] impinges on inmates' constitutional rights, the regulation is valid if it is reasonably  
20 related to legitimate penological interests. The Court set out four factors to be considered:

21  
22 1) Whether there is a valid, rational connection between the prison regulation and  
23 the legitimate government interest put forward to justify it. A regulation cannot be  
24 sustained where the logical connection between the regulation and the asserted goal is so  
remote as to render the policy arbitrary or irrational, and the government objective must be  
a legitimate and neutral one.

25 (2) Whether there are alternative means of exercising the right that remains open. If so,  
26 courts should be particularly conscious of the measure of judicial deference owed to  
27 corrections officials.

28 (3) What impact the accommodation of the asserted right will have on guards, other  
inmates and the allocation of prison resources generally. If the accommodation will have a  
significant ripple effect the courts should be particularly deferential to the informed  
discretion of correctional officials.

1 (4) If there is an absence of ready alternatives, this is evidence of the reasonableness of a  
2 prison regulation.

3 *Id.* at 89-91.

4 Here, Plaintiff alleges that Defendants are state actors and that they have discriminated  
5 against him based on gender. Specifically, he alleges that Defendants have imposed personal  
6 property requirements on him that are disparate from those imposed on similarly situated female  
7 inmates of the same, and greater, security risk classifications. He claims equal protection  
8 violations in the decision making process by which the CDCR provides favored treatment to  
9 female inmates as compared with male inmates, for no reason other than gender. The court finds  
10 that Plaintiff's allegations are sufficient to state a colorable claim for a violation of the right to  
11 equal protection of the law under the Eighth Amendment.

### 12 CONCLUSION

13 The Clerk shall issue a summons and the United States Marshal shall serve the summons,  
14 copies of the complaint with attachments and copies of this order on the named Defendants or  
15 their successors.

16 All communications by Plaintiff with the Court must be served on Defendants, or  
17 Defendants' counsel once counsel has been designated, by mailing a true copy of the document to  
18 Defendants or Defendants' counsel.

19 Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No  
20 further Court order under Federal Rule of Civil Procedure 30(a)(2) is required before the parties  
21 may conduct discovery.

22 It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court informed  
23 of any change of address by filing a separate paper with the clerk headed "Notice of Change of  
24 Address." He also must comply with the Court's orders in a timely fashion. Failure to do so may  
25 result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil  
26 Procedure 41(b).

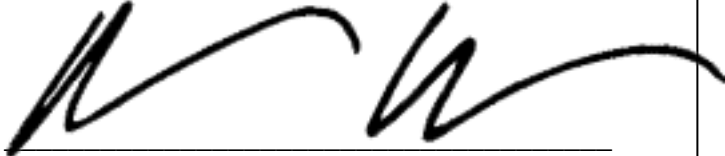
27 **A telephonic case management conference is HEREBY SET for 10:00 a.m. on**  
28 **February 28, 2017. The parties shall attend the case management conference by dialing 888-**

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**684-8852 and entering access code 1868782. The parties shall be prepared to set dates for discovery, dispositive motions, and trial. The court will mail a copy of the Handbook for Pro Se Litigants to Plaintiff, along with a copy of the standing order regarding case management statements. The parties shall file individual case management statements no later than February 21, 2017.**

**IT IS SO ORDERED.**

Dated: January 20, 2017



NANDOR J. VADAS  
United States Magistrate Judge