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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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9 DAVID RAYMOND ANDREWS,)
10 Plaintiff(s),) No. C 09-5858 CRB (PR)
11 v.) ORDER OF SERVICE
12 J. EVERT, et al.,)
13 Defendant(s).)
14

15 Plaintiff, a prisoner at Pelican Bay State Prison (PBSP), has filed a pro se
16 First Amended Complaint (FAC) under 42 U.S.C. §§ 1983 and 1985 alleging
17 various violations of his constitutional rights. He seeks declaratory, injunctive
18 and monetary relief.

19 **DISCUSSION**

20 A. Standard of Review

21 Federal courts must engage in a preliminary screening of cases in which
22 prisoners seek redress from a governmental entity or officer or employee of a
23 governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable
24 claims or dismiss the complaint, or any portion of the complaint, if the complaint
25 "is frivolous, malicious, or fails to state a claim upon which relief may be
26 granted," or "seeks monetary relief from a defendant who is immune from such
27 relief." Id. § 1915A(b). Pro se pleadings must be liberally construed, however.
28 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
2 essential elements: (1) that a right secured by the Constitution or laws of the
3 United States was violated, and (2) that the alleged violation was committed by a
4 person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48
5 (1988).

6 To state a claim under 42 U.S.C. § 1985(3), a plaintiff must allege three
7 elements: (1) the existence of a conspiracy to deprive the plaintiff of the equal
8 protections of the law, (2) an act in furtherance of the conspiracy and (3) a
9 resulting injury. Addisu v. Fred Meyer, Inc., 198 F.3d 1130, 1141 (9th Cir.
10 2000).

11 B. Legal Claims

12 Plaintiff alleges that defendants "secretly agreed and willfully and
13 deliberately deterred, impeded and denied" him access to the courts on account of
14 his race, African American. Among other things, plaintiff alleges that defendants
15 agreed to restrict his access to the law library and legal copies, and to obtain a
16 certification of funds in his prisoner's trust account, and that this interfered with
17 his filing of a petition for a writ of habeas corpus in the Supreme Court of
18 California and an appeal of a civil rights case in the Ninth Circuit. Liberally
19 construed, plaintiff's allegations appear to state a cognizable claim for denial of
20 access to the courts under § 1983, and a cognizable claim for conspiracy to
21 deprive him of the equal protection of the law under § 1985(3), and will be
22 served on the named defendants. See Lewis v. Casey, 518 U.S. 343, 350 (1996)
23 (prisoners have a constitutional right of access to the courts).

24 Plaintiff also alleges that defendants violated his right to equal protection
25 by handcuffing him whenever he was in the law library while never handcuffing
26 non-minority prisoners; and that defendants violated his right to due process by
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1 destroying some of his papers. Liberally construed, plaintiff's allegations of
2 racial discrimination appear to state a cognizable claim for denial of equal
3 protection under § 1983 and will be served on the named defendants. See Wolff
4 v. McDonnell, 418 U.S. 539, 556 (1974) (prisoners are protected under Equal
5 Protection Clause from invidious discrimination based on race). But plaintiff's
6 allegations of destruction of some of his papers fails to state a due process claim
7 under § 1983 and must be dismissed under the authority of 28 U.S.C. §
8 1915A(b). See Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir. 1994)
9 (deprivation of property fails to state a due process claim under § 1983 if the state
10 has an adequate post-deprivation remedy and it is well-established that California
11 law provides such an adequate post-deprivation remedy for deprivations of
12 property).

13 CONCLUSION

14 For the foregoing reasons and for good cause shown,

15 1. The clerk shall issue summons and the United States Marshal shall
16 serve, without prepayment of fees, copies of the FAC (docket # 17) in this matter,
17 all attachments thereto, and copies of this order on the named defendants. The
18 clerk also shall serve a copy of this order on plaintiff.

19 2. In order to expedite the resolution of this case, the court orders as
20 follows:

21 a. No later than 90 days from the date of this order, defendants
22 shall file a motion for summary judgment or other dispositive motion. A motion
23 for summary judgment shall be supported by adequate factual documentation and
24 shall conform in all respects to Federal Rule of Civil Procedure 56, and shall
25 include as exhibits all records and incident reports stemming from the events at
26 issue. If defendants are of the opinion that this case cannot be resolved by
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1 summary judgment or other dispositive motion, they shall so inform the court
2 prior to the date their motion is due. All papers filed with the court shall be
3 served promptly on plaintiff.

4 b. Plaintiff's opposition to the dispositive motion shall be filed
5 with the court and served upon defendants no later than 30 days after defendants
6 serve plaintiff with the motion.

7 c. Plaintiff is advised that a motion for summary judgment
8 under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your
9 case. Rule 56 tells you what you must do in order to oppose a motion for
10 summary judgment. Generally, summary judgment must be granted when there
11 is no genuine issue of material fact--that is, if there is no real dispute about any
12 fact that would affect the result of your case, the party who asked for summary
13 judgment is entitled to judgment as a matter of law, which will end your case.
14 When a party you are suing makes a motion for summary judgment that is
15 properly supported by declarations (or other sworn testimony), you cannot simply
16 rely on what your complaint says. Instead, you must set out specific facts in
17 declarations, depositions, answers to interrogatories, or authenticated documents,
18 as provided in Rule 56(e), that contradicts the facts shown in the defendant's
19 declarations and documents and show that there is a genuine issue of material
20 fact for trial. If you do not submit your own evidence in opposition, summary
21 judgment, if appropriate, may be entered against you. If summary judgment is
22 granted, your case will be dismissed and there will be no trial. Rand v. Rowland,
23 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc) (App A).

24 Plaintiff is also advised that a motion to dismiss for failure to exhaust
25 administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your
26 case, albeit without prejudice. You must “develop a record” and present it in
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1 your opposition in order to dispute any “factual record” presented by the
2 defendants in their motion to dismiss. Wyatt v. Terhune, 315 F.3d 1108, 1120
3 n.14 (9th Cir. 2003).

4 d. Defendants shall file a reply brief within 15 days of the date
5 on which plaintiff serves them with the opposition.

6 e. The motion shall be deemed submitted as of the date the
7 reply brief is due. No hearing will be held on the motion unless the court so
8 orders at a later date.

9 3. Discovery may be taken in accordance with the Federal Rules of
10 Civil Procedure. No further court order is required before the parties may
11 conduct discovery.

12 4. All communications by plaintiff with the court must be served on
13 defendants, or defendants' counsel once counsel has been designated, by mailing
14 a true copy of the document to defendants or defendants' counsel.

15 5. It is plaintiff's responsibility to prosecute this case. Plaintiff must
16 keep the court and all parties informed of any change of address and must comply
17 with the court's orders in a timely fashion. Failure to do so may result in the
18 dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b).

19 SO ORDERED.

20 DATED: April 23, 2010



CHARLES R. BREYER
United States District Judge