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United States District Court  
For the Northern District of California

\*E-Filed 8/23/10\*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MASALA MAJID JAMES,  
Plaintiff,

No. C 10-0599 RS (PR)  
**ORDER OF SERVICE**

v.

GREGORY J. AHERN, et al.,  
Defendants.

This is a federal civil rights action filed by a *pro se* state prisoner pursuant to 28 U.S.C. § 1983 in which it is alleged that defendants, officers and employees at the Alameda County Sheriff’s Department, violated his First and Eighth Amendment rights. The Court now reviews the amended complaint pursuant to 28 U.S.C. § 1915A(a).

**DISCUSSION**

**A. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and

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1 dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may  
2 be granted or seek monetary relief from a defendant who is immune from such relief. *See id.*  
3 § 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica*  
4 *Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

5 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim  
6 to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)  
7 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial  
8 plausibility when the plaintiff pleads factual content that allows the court to draw the  
9 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting  
10 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal  
11 conclusions cast in the form of factual allegations if those conclusions cannot reasonably be  
12 drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th  
13 Cir. 1994).

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

18 **B. Claims**

19 Plaintiff alleges that defendants, officers and employees of the Alameda County  
20 Sheriff’s Department, violated his right to due process and his Sixth Amendment right to  
21 self-representation by restricting his access to the law library. Liberally construed, these  
22 claims are cognizable in a federal civil rights action under § 1983.

23 Plaintiff’s claim that defendants violated his right to privacy, especially as it relates to  
24 attorney-client privilege, is DISMISSED without prejudice on grounds that it is unrelated to  
25 his library access claims. *See Fed. R. Civ. Proc. 18 & 20*. If plaintiff wishes to pursue his  
26 right to privacy claim, he must file a new federal action.

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1 Plaintiff's claim that defendants committed abuse of process is a state law claim. The  
2 Court declines to exercise jurisdiction over this claim, which is DISMISSED without  
3 prejudice. If plaintiff seeks relief on this claim, he must file a state court action.

4 **MOTION**

5 Plaintiff's motion for leave to contact non-party witnesses (Docket No. 5) is DENIED  
6 without prejudice. Plaintiff may renew such motion after defendants have filed a response to  
7 this service order.

8 **CONCLUSION**

9 For the foregoing reasons, the Court orders as follows:

10 1. The Clerk of the Court shall issue summons and the United States  
11 Marshal shall serve, without prepayment of fees, a copy of the complaint in this matter, all  
12 attachments thereto, and a copy of this order upon the following defendants at the Alameda  
13 County Sheriff's Department: Gregory J. Ahern, Robert Barnham, and T. Smith. The Clerk  
14 shall also mail courtesy copies of the complaint and this order to the California Attorney  
15 General's Office.

16 3. No later than ninety (90) days from the date of this order, defendants shall file  
17 a motion for summary judgment or other dispositive motion with respect to the claims in the  
18 amended complaint found to be cognizable above.

19 a. If defendants elect to file a motion to dismiss on the grounds plaintiff  
20 failed to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a),  
21 defendants shall do so in an unenumerated Rule 12(b) motion pursuant to *Wyatt v. Terhune*,  
22 315 F.3d 1108, 1119–20 (9th Cir. 2003), cert. denied *Alameida v. Terhune*, 540 U.S. 810  
23 (2003).

24 b. Any motion for summary judgment shall be supported by adequate  
25 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of  
26 Civil Procedure. Defendants are advised that summary judgment cannot be granted, nor  
27 qualified immunity found, if material facts are in dispute. If any defendant is of the opinion  
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1 that this case cannot be resolved by summary judgment, he shall so inform the Court prior to  
2 the date the summary judgment motion is due.

3 4. Plaintiff's opposition to the dispositive motion shall be filed with the Court and  
4 served on defendants no later than forty-five (45) days from the date defendants' motion is  
5 filed.

6 a. In the event the defendants file an unenumerated motion to dismiss  
7 under Rule 12(b), plaintiff is hereby cautioned as follows:

8 The defendants have made a motion to dismiss pursuant to Rule 12(b) of the  
9 Federal Rules of Civil Procedure, on the ground you have not exhausted your administrative  
10 remedies. The motion will, if granted, result in the dismissal of your case. When a party you  
11 are suing makes a motion to dismiss for failure to exhaust, and that motion is properly  
12 supported by declarations (or other sworn testimony) and/or documents, you may not simply  
13 rely on what your complaint says. Instead, you must set out specific facts in declarations,  
14 depositions, answers to interrogatories, or documents, that contradict the facts shown in the  
15 defendant's declarations and documents and show that you have in fact exhausted your  
16 claims. If you do not submit your own evidence in opposition, the motion to dismiss, if  
17 appropriate, may be granted and the case dismissed.

18 b. In the event defendants file a motion for summary judgment,  
19 the Ninth Circuit has held that the following notice should be given to plaintiffs:

20 The defendants have made a motion for summary judgment by which they  
21 seek to have your case dismissed. A motion for summary judgment under Rule 56 of the  
22 Federal Rules of Civil Procedure will, if granted, end your case.

23 Rule 56 tells you what you must do in order to oppose a motion for summary  
24 judgment. Generally, summary judgment must be granted when there is no genuine issue of  
25 material fact — that is, if there is no real dispute about any fact that would affect the result  
26 of your case, the party who asked for summary judgment is entitled to judgment as a matter  
27 of law, which will end your case. When a party you are suing makes a motion for summary  
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1 judgment that is properly supported by declarations (or other sworn testimony), you cannot  
2 simply rely on what your complaint says. Instead, you must set out specific facts in  
3 declarations, depositions, answers to interrogatories, or authenticated documents, as provided  
4 in Rule 56(e), that contradict the facts shown in the defendants' declarations and documents  
5 and show that there is a genuine issue of material fact for trial. If you do not submit your  
6 own evidence in opposition, summary judgment, if appropriate, may be entered against you.  
7 If summary judgment is granted in favor of defendants, your case will be dismissed and there  
8 will be no trial. *See Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). Plaintiff  
9 is advised to read Rule 56 of the Federal Rules of Civil Procedure and *Celotex Corp. v.*  
10 *Catrett*, 477 U.S. 317 (1986) (holding party opposing summary judgment must come forward  
11 with evidence showing triable issues of material fact on every essential element of his claim).  
12 Plaintiff is cautioned that failure to file an opposition to defendants' motion for summary  
13 judgment may be deemed to be a consent by plaintiff to the granting of the motion, and  
14 granting of judgment against plaintiff without a trial. *See Ghazali v. Moran*, 46 F.3d 52,  
15 53-54 (9th Cir. 1995) (per curiam); *Brydges v. Lewis*, 18 F.3d 651, 653 (9th Cir. 1994).

16 5. Defendants shall file a reply brief no later than fifteen (15) days after plaintiff's  
17 opposition is filed.

18 6. The motion shall be deemed submitted as of the date the reply brief is due. No  
19 hearing will be held on the motion unless the Court so orders at a later date.

20 7. All communications by the plaintiff with the Court must be served on  
21 defendants, or defendants' counsel once counsel has been designated, by mailing a true copy  
22 of the document to defendants or defendants' counsel.

23 8. Discovery may be taken in accordance with the Federal Rules of Civil  
24 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local  
25 Rule 16-1 is required before the parties may conduct discovery.

26 9. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the  
27 court informed of any change of address and must comply with the court's orders in a timely  
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1 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute  
2 pursuant to Federal Rule of Civil Procedure 41(b).

3 10. Extensions of time must be filed no later than the deadline sought to be  
4 extended and must be accompanied by a showing of good cause.

5 11. Plaintiff's motion to contact non-party witnesses is DENIED without prejudice.

6 12. This order terminates Docket No. 5.

7 **IT IS SO ORDERED.**

8 DATED: August 23, 2010

  
RICHARD SEEBORG  
United States District Judge

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