

1 or any portion of the complaint, if the complaint "is frivolous,
2 malicious, or fails to state a claim upon which relief may be
3 granted," or "seeks monetary relief from a defendant who is immune
4 from such relief." Id § 1915A(b). Pleadings filed by pro se
5 litigants, however, must be liberally construed. Balistreri v
6 Pacifica Police Dep't, 901 F2d 696, 699 (9th Cir 1990).

7 To state a claim under 42 USC § 1983, a plaintiff must
8 allege two essential elements: (1) that a right secured by the
9 Constitution or laws of the United States was violated, and (2) that
10 the alleged violation was committed by a person acting under the
11 color of state law. West v Atkins, 487 US 42, 48 (1988).

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13 II

14 Regulations limiting prisoners' access to publications or
15 other information are valid only if they are reasonably related to
16 legitimate penological interests. See Thornburgh v Abbott, 490 US
17 401, 413 (1989) (citing Turner v Safley, 482 US 78, 89 (1987)).
18 Liberally construed, plaintiff's allegations relating to the
19 confiscation of his book on the Black Panther Party appear to state
20 a cognizable 42 USC § 1983 claim for violation of the First
21 Amendment and will be served on the named defendants. Cf Ashker v
22 CDC, 350 F3d 917, 923-24 (9th Cir 2003) (policy requiring vendors to
23 send books with a prison-provided vendor label was not rationally
24 related to security concerns, where separate policy required all
25 books to be sent directly from vendors, all personal property
26 received by inmates was searched prior to delivery, and there was no
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1 label requirement imposed on other vendors, whose goods also could
2 be used to smuggle in contraband).

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4 III

5 For the foregoing reasons and for good cause shown:

6 1. The clerk shall issue summons and the United States
7 Marshal shall serve, without prepayment of fees, copies of: (1) the
8 original complaint in this matter and all attachments thereto, which
9 are copies of the appeals filed pursuant to the inmate
10 administrative grievance system that are related to plaintiff's
11 claim (Doc #1); (2) the first amended complaint in this matter (Doc
12 #7); and (3) copies of this order on SQSP correctional officers A
13 Panizza, C Seman, D Padilla and S Wright. The clerk also shall
14 serve a copy of this order on plaintiff.

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

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

1 b. Plaintiff's opposition to the dispositive motion
2 shall be filed with the court and served upon defendants no later
3 than thirty (30) days after defendants serve plaintiff with the
4 motion.

5 c. Plaintiff is advised that a motion for summary
6 judgment under Rule 56 of the Federal Rules of Civil Procedure will,
7 if granted, end your case. Rule 56 tells you what you must do in
8 order to oppose a motion for summary judgment. Generally, summary
9 judgment must be granted when there is no genuine issue of material
10 fact - that is, if there is no real dispute about any fact that
11 would affect the result of your case, the party who asked for
12 summary judgment is entitled to judgment as a matter of law, which
13 will end your case. When a party you are suing makes a motion for
14 summary judgment that is properly supported by declarations (or
15 other sworn testimony), you cannot simply rely on what your
16 complaint says. Instead, you must set out specific facts in
17 declarations, depositions, answers to interrogatories, or
18 authenticated documents, as provided in Rule 56(e), that contradicts
19 the facts shown in the defendants' declarations and documents and
20 show that there is a genuine issue of material fact for trial. If
21 you do not submit your own evidence in opposition, summary judgment,
22 if appropriate, may be entered against you. If summary judgment is
23 granted, your case will be dismissed and there will be no trial.
24 Rand v Rowland, 154 F3d 952, 962-63 (9th Cir 1998) (en banc) (App
25 A).

26 Plaintiff also is advised that a motion to dismiss for
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1 failure to exhaust administrative remedies under 42 USC § 1997e(a)
2 will, if granted, end your case, albeit without prejudice. You must
3 "develop a record" and present it in your opposition in order to
4 dispute any "factual record" presented by the defendants in their
5 motion to dismiss. Wyatt v Terhune, 315 F3d 1108, 1120 n14 (9th Cir
6 2003).

7 d. Defendants shall file a reply brief within
8 fifteen (15) days of the date on which plaintiff serves them with
9 the opposition.

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

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

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

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

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IT IS SO ORDERED.

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VAUGHN R WALKER
United States District Chief Judge

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