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

RAYMOND MANZANILLO,)	No. C 10-3783 JSW (PR)
)	
Plaintiff,)	ORDER OF SERVICE
)	
v.)	
)	
FRANCISCO JACQUEZ, R. GRAVES,)	
R. TUPY, J. ZUCCO, MARK POTTER,)	
ROLF KLOTZ,)	
)	
Defendants.)	

INTRODUCTION

Plaintiff, a California prisoner proceeding pro se, filed this rights action pursuant to 42 U.S.C. § 1983 against officials of Pelican Bay State Prison, where Plaintiff is incarcerated. Plaintiff has paid the filing fee. The Court now reviews the complaint pursuant to 28 U.S.C. § 1915A, and orders it served upon Defendants.

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). The Court must identify cognizable claims or dismiss any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b). Pro se pleadings must be liberally construed.

1 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

2 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement
3 of the claim showing that the pleader is entitled to relief." "Specific facts are not
4 necessary; the statement need only "give the defendant fair notice of what the . . . claim
5 is and the grounds upon which it rests."" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200
6 (2007) (citations omitted). Although in order to state a claim a complaint "does not need
7 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his
8 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic
9 recitation of the elements of a cause of action will not do. . . . Factual allegations must
10 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
11 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer
12 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se
13 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
14 699 (9th Cir. 1990).

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

19 ANALYSIS

20 Plaintiff alleges that Defendants Zucco and Potter used excessive force to restrain
21 him after he had been in a fight with another inmate, had been pepper-sprayed, and had
22 stopped resisting. He alleges that he suffered a broken rib and two herniated discs. He
23 alleges that Defendant Klotz ignored his subsequent request for medical attention despite
24 Plaintiff's telling him that he was in pain. Plaintiff also alleges that Defendant Jacquez
25 failure to properly train the staff at the prison in advance of the incident. When liberally
26 construed, Plaintiff's allegations are sufficient to state cognizable claims against these
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1 Defendants for the violation of his Eighth Amendment rights.

2 Plaintiff also alleges that Defendant Graves did not follow prison procedures
3 requiring videotape interviews after incidents of force and injury. Failing to follow such
4 a procedure does not violate any constitutional right or other provision of federal law
5 cited by Plaintiff or known to the Court. Plaintiff also alleges that Defendant Tupy
6 knowingly omitted facts from his written report of the incident, which prevented Plaintiff
7 from “properly” obtaining review of his administrative grievances. Such allegations do
8 not state a cognizable claim against Tupy because there is no constitutional right to a
9 prison administrative appeal or grievance system. *See Ramirez v. Galaza*, 334 F.3d 850,
10 860 (9th Cir. 2003). Therefore, the claims against Graves and Tupy will be dismissed.

11 CONCLUSION

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

13 1. The claims against Defendants Graves and Tupy are DISMISSED for failure to
14 state a cognizable claim for relief.

15 2. The Clerk of the Court shall issue summons and the United States Marshal
16 shall serve, without prepayment of fees, a copy of the complaint and all attachments
17 thereto, and a copy of this order upon: Defendants **Warden Francisco Jacquez, J.**
18 **Zucco, Mark Potter, and Rolf Klotz at Pelican Bay State Prison.**

19 The Clerk shall also mail a courtesy copy of the complaint and this order to the
20 California Attorney General.

21 The Clerk shall also serve a copy of this order on Plaintiff.

22 2. In order to expedite the resolution of this case, the Court orders as follows:

23 a. No later than **ninety (90) days** from the date this order is filed,
24 Defendants shall either file a motion for summary judgment or other dispositive motion,
25 or a notice to the Court that they are of the opinion that this matter cannot be resolved by
26 dispositive motion. The motion shall be supported by adequate factual documentation
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1 and shall conform in all respects to Federal Rule of Civil Procedure 56.

2 **Defendants are advised that summary judgment cannot be granted, nor**
3 **qualified immunity found, if material facts are in dispute. If defendants are of the**
4 **opinion that this case cannot be resolved by summary judgment, they shall so**
5 **inform the Court prior to the date the summary judgment motion is due.**

6 All papers filed with the Court shall be promptly served on the Plaintiff.

7 b. Plaintiff's opposition to the dispositive motion, if any, shall be filed with
8 the court and served upon defendants no later than thirty days from the date of service of
9 the motion. Plaintiff must read the attached page headed "NOTICE -- WARNING,"
10 which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir.
11 1998) (en banc), and *Klingele v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

12 If defendants file an unenumerated motion to dismiss claiming that plaintiff failed
13 to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a),
14 plaintiff should take note of the attached page headed "NOTICE -- WARNING
15 (EXHAUSTION)." See *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4 (9th Cir. 2003)

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

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

20 3. Discovery may be taken in accordance with the Federal Rules of Civil
21 Procedure. No further Court order under Federal Rule of Civil Procedure 30(a)(2) or
22 Local Rule 16 is required before the parties may conduct discovery.

23 4. Extensions of time are not favored, though reasonable extensions will be
24 granted. Any motion for an extension of time must be filed no later than **five** days prior
25 to the deadline sought to be extended.


26 5. All communications by Plaintiff with the Court must be served on Defendant,
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1 or Defendant's counsel once counsel has been designated, by mailing a true copy of the
2 document to Defendant or Defendant's counsel.

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

7 IT IS SO ORDERED.

8 DATED: January 7, 2011

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11 JEFFREY S. WHITE
12 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 RAYMOND MANZANILLO,
6 Plaintiff,

Case Number: CV10-03783 JSW

7 **CERTIFICATE OF SERVICE**

8 v.

9 FRANCISCO JAQUEZ et al,
10 Defendant.

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on January 7, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
16 receptacle located in the Clerk's office.

17 Raymond J. Manzanillo
18 PBSP
19 P.O. Box 7500
20 J91574
21 Crescent City, CA 95532

22 Dated: January 7, 2011



23 Richard W. Wieking, Clerk
24 By: Jennifer Ottolini, Deputy Clerk
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