

1 The court must identify cognizable claims or dismiss the complaint,
2 or any portion of the complaint, if the complaint "is frivolous,
3 malicious, or fails to state a claim upon which relief may be
4 granted," or "seeks monetary relief from a defendant who is immune
5 from such relief." Id. § 1915A(b). Pleadings filed by pro se
6 litigants, however, must be liberally construed. Hebbe v. Pliler,
7 627 F.3d 338, 342 (9th Cir. 2010); Balistreri v. Pacifica Police
8 Dep't., 901 F.2d 696, 699 (9th Cir. 1990).

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

14
15 II

16 The Eighth Amendment requires that prison officials take
17 reasonable measures to guarantee the safety of prisoners. Farmer v.
18 Brennan, 511 U.S. 825, 832 (1994). In particular, prison officials
19 have a duty to protect prisoners from violence at the hands of other
20 prisoners. Id. at 833; Hearns v. Terhune, 413 F.3d 1036, 1040 (9th
21 Cir. 2005); Hoptowit v. Ray, 682 F.2d 1237, 1250 (9th Cir. 1982);
22 Gillespie v. Civiletti, 629 F.2d 637, 642 & n.3 (9th Cir. 1980).

23 A pretrial detainee is not protected by the Eighth
24 Amendment, however, because he has not been convicted of a crime.
25 See Bell v. Wolfish, 441 U.S. 520, 535 & n.16 (1979). Instead,
26 pretrial detainees are afforded protection under the Due Process
27 Clause of the Fourteenth Amendment. See United States v. Salerno,

1 481 U.S. 739, 746-47 (1987); Bell, 441 U.S. at 535-36. The
2 protections of the Due Process Clause are at least as great as those
3 of the Eighth Amendment. See Revere v. Massachusetts General Hosp.,
4 463 U.S. 239, 244 (1983); Gary H. v. Hegstrom, 831 F.2d 1430, 1432
5 (9th Cir. 1987). In the Ninth Circuit, "deliberate indifference is
6 the level of culpability that pretrial detainees must establish for
7 a violation of their personal security interests under the
8 [F]ourteenth [A]mendment." Redman v. County of San Diego, 942 F.2d
9 1435, 1443 (9th Cir. 1991) (en banc).

10 Here, Plaintiff, who was a protective custody trustee in
11 the San Mateo County Jail, alleges that on November 10, 2009, Deputy
12 Fuentes opened the general population cell doors while Plaintiff was
13 returning to his cell, an action which resulted in Plaintiff being
14 "attacked and brutally assaulted by two northern gang members from
15 general population." Doc. #1 at 3. Plaintiff seeks damages.

16 Liberally construed, Plaintiff's allegations against
17 Deputy Fuentes described above appear to state a cognizable 42
18 U.S.C. § 1983 claim for a due process violation and Defendant San
19 Mateo Sheriff's Deputy Fuentes will be served. Named Defendant "San
20 Mateo County Jail" is DISMISSED.

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22 III

23 For the foregoing reasons and for good cause shown:

- 24 1. Named Defendant "San Mateo County Jail" is DISMISSED.
25 2. The Clerk shall issue summons and the United States
26 Marshal shall serve, without prepayment of fees, copies of the
27 Complaint in this matter and all attachments thereto and copies of
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1 this order on Defendant San Mateo County Sheriff's Deputy Fuentes.
2 The Clerk also shall serve a copy of this order on Plaintiff.

3 3. To expedite the resolution of this case, the Court
4 orders as follows:

5 a. No later than ninety (90) days from the date of
6 this order, Defendant shall file a motion for summary judgment or
7 other dispositive motion. A motion for summary judgment shall be
8 supported by adequate factual documentation and shall conform in all
9 respects to Federal Rule of Civil Procedure 56, and shall include as
10 exhibits all records and incident reports stemming from the events
11 at issue. If Defendant is of the opinion that this case cannot be
12 resolved by summary judgment or other dispositive motion, he shall
13 so inform the Court prior to the date his motion is due. All papers
14 filed with the Court shall be served promptly on Plaintiff.

15 b. Plaintiff's opposition to the dispositive motion
16 shall be filed with the court and served upon Defendant no later
17 than thirty (30) days after Defendant serves Plaintiff with the
18 motion.

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

13 Plaintiff also is advised that a motion to dismiss for
14 failure to exhaust administrative remedies under 42 U.S.C. §
15 1997e(a) will, if granted, end your case, albeit without prejudice.
16 You must "develop a record" and present it in your opposition in
17 order to dispute any "factual record" presented by the Defendant in
18 his motion to dismiss. Wyatt v. Terhune, 315 F.3d 1108, 1120 n.14
19 (9th Cir. 2003).

20 d. Defendant shall file a reply brief within
21 fifteen (15) days of the date on which Plaintiff serves him with the
22 opposition.

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

26 4. Discovery may be taken in accordance with the Federal
27 Rules of Civil Procedure. No further court order is required before
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1 the parties may conduct discovery.

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

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

11 IT IS SO ORDERED.

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14 DATED 03/22/2011



THELTON E. HENDERSON
United States District Judge