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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARCUS HARRISON,
Plaintiff,

v.

E. SMITH, et al.,
Defendants.

Case No. 11-3186 JST (PR)

**ORDER OF SERVICE; DIRECTIONS
TO CLERK**

Plaintiff, an inmate at Pelican Bay State Prison (“PBSP”), filed this pro se civil rights action under 42 U.S.C. § 1983. The Court reviewed his complaint and dismissed it with leave to amend. He then filed an amended complaint, which is now before the Court for review under 28 U.S.C. § 1915A.

DISCUSSION

A. 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 the complaint, or 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, however. Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that

1 the alleged violation was committed by a person acting under the color of state law. West v.
2 Atkins, 487 U.S. 42, 48 (1988).

3 B. Legal Claims

4 Plaintiff alleges that PBSP correctional officers E. Smith and R. Graves retaliated against
5 him for filing inmate grievances by, among other things, threatening plaintiff with rules violation
6 reports, denying plaintiff issuance of “indigent floss loops,” selectively enforcing prison
7 regulations against plaintiff, refusing to act on plaintiff’s grievances and appeals, and subjecting
8 plaintiff to a hostile inmate. Liberally construed, plaintiff’s allegations state cognizable retaliation
9 claims under § 1983 against the named defendants because it is well established that prison
10 officials may not retaliate against prisoners for filing inmate grievances. See Rhodes v. Robinson,
11 408 F.3d 559, 567 (9th Cir. 2005); Bruce v. Ylst, 351 F.3d 1283, 1288 (9th Cir. 2003).

12 **CONCLUSION**

13 1. Plaintiff’s amended complaint states cognizable claims for retaliation against
14 E. Smith and R. Graves. The Clerk shall terminate all other defendants.

15 2. The Clerk shall issue summons and the United States Marshal shall serve, without
16 prepayment of fees, the summons, a copy of the amended complaint, all attachments thereto, and a
17 copy of this order on E. Smith and R. Graves at Pelican Bay State Prison.

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

19 a. No later than **90 days** from the date this order is filed, defendants must file
20 and serve a motion for summary judgment or other dispositive motion. If defendants are of the
21 opinion that this case cannot be resolved by summary judgment, defendants must so inform the
22 Court prior to the date the motion is due. A motion for summary judgment also must be
23 accompanied by a Rand notice so that plaintiff will have fair, timely and adequate notice of what
24 is required of him in order to oppose the motion. Woods v. Carey, 684 F.3d 934, 939 (9th Cir.
25 2012) (notice requirement set out in Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998), must be
26 served concurrently with motion for summary judgment). A motion to dismiss for failure to
27 exhaust available administrative remedies similarly must be accompanied by a Wyatt notice.
28 Stratton v. Buck, 697 F.3d 1004, 1008 (9th Cir. 2012).

1 b. Plaintiff’s opposition to the summary judgment or other dispositive motion
2 must be filed with the Court and served upon defendants no later than **28 days** from the date the
3 motion is filed. Plaintiff must bear in mind the notice and warning regarding summary judgment
4 provided later in this order as he prepares his opposition to any motion for summary judgment.
5 Plaintiff also must bear in mind the notice and warning regarding motions to dismiss for non-
6 exhaustion provided later in this order as he prepares his opposition to any motion to dismiss.

7 c. Defendants **shall** file a reply brief no later than **14 days** after the date the
8 opposition is filed. The motion shall be deemed submitted as of the date the reply brief is due. No
9 hearing will be held on the motion.

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

24 Plaintiff also is advised that a motion to dismiss for failure to exhaust available
25 administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your case, albeit without
26 prejudice. You must “develop a record” and present it in your opposition in order to dispute any
27 “factual record” presented by defendants in their motion to dismiss. Wyatt v. Terhune, 315 F.3d
28 1108, 1120 n.14 (9th Cir. 2003).

1 (The Rand and Wyatt notices above do not excuse defendants' obligation to serve said
2 notices again concurrently with motions to dismiss for failure to exhaust available administrative
3 remedies and motions for summary judgment. Woods, 684 F.3d at 939).

4 5. All communications by plaintiff with the Court must be served on defendants'
5 counsel by mailing a true copy of the document to defendants' counsel. The Court may disregard
6 any document which a party files but fails to send a copy of to his opponent. Until a defendants'
7 counsel has been designated, plaintiff may mail a true copy of the document directly to
8 defendants, but once a defendant is represented by counsel, all documents must be mailed to
9 counsel rather than directly to that defendant.

10 6. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
11 No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16 is required
12 before the parties may conduct discovery.

13 7. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the
14 Court informed of any change of address and must comply with the Court's orders in a timely
15 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
16 to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of address in every
17 pending case every time he is moved to a new facility.

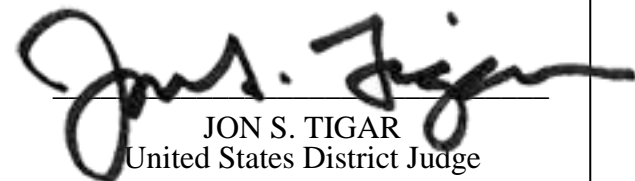
18 8. Any motion for an extension of time must be filed no later than the deadline sought
19 to be extended and must be accompanied by a showing of good cause.

20 9. Plaintiff is cautioned that he must include the case name and case number for this
21 case on any document he submits to the Court for consideration in this case.

22 **IT IS SO ORDERED.**

23 Dated: April 4, 2013

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JON S. TIGAR
United States District Judge