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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MALIK JONES,
Plaintiff,
v.
D. BRIGHT, et al.,
Defendants.

Case No. [11-cv-06313-WHO](#)

ORDER OF SERVICE;

**ORDER DIRECTING DEFENDANTS
TO FILE A DISPOSITIVE MOTION
OR NOTICE REGARDING SUCH
MOTION;**

INSTRUCTIONS TO CLERK

INTRODUCTION

Plaintiff Malik Jones's amended complaint, filed as part of his pro se federal civil rights action under 42 U.S.C. § 1983, is now before the Court for review under 28 U.S.C. § 1915A(a).

His original complaint was dismissed with leave to amend. It raised a wide variety of unrelated claims against staff at Salinas Valley State Prison. The order of dismissal, invoking Federal Rule of Civil Procedure 20, instructed Jones that he "may only allege claims that (a) arise out of the same transaction, occurrence, or series of transactions or occurrences, and (b) present questions of law common to all defendants named therein." (Docket No. 16 at 2.)

1 (9th Cir. 1994). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
2 essential elements: (1) that a right secured by the Constitution or laws of the United States
3 was violated, and (2) that the alleged violation was committed by a person acting under the
4 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

5 **B. Legal Claims**

6 Plaintiff Jones makes various claims against eighteen defendants (correctional
7 officers, administrators, and medical staff) for many acts and omissions unrelated by fact
8 or law. The sole claim that shall proceed in this action is the claim that D. Tyler, a nurse at
9 Salinas Valley State Prison, provided constitutionally inadequate medical care. When
10 liberally construed, those allegations state a claim for relief under § 1983.

11 His claims that his administrative grievances were improperly processed, and his
12 central files corrupted, by defendants I. Herrera and E. Medina are DISMISSED without
13 prejudice to Jones filing them in a separate civil rights complaint.

14 His claim that D. Bright, a physician, used excessive force against him is
15 DISMISSED without prejudice to Jones filing such claim in a separate civil rights action.

16 His claims that D. Bright and Fox deprived him of his wheelchair, destroyed his
17 files related to his use of the wheelchair, and retaliated against him, and his claims that
18 Machuca, Vialobos, Lopez, Johnson, Cato, Sepulveda, Silva, Bright, Fox, Strauss, Lawler,
19 Mack, Herrera, Trent, Gebauer, and Munic refused to accommodate his need to have his
20 meals brought to his cell, otherwise failed to accommodate his disability, and participated
21 in retaliatory acts, are DISMISSED without prejudice to Jones filing them in a separate
22 civil rights action.

23 Hedgpeth, Warden of Salinas Valley, is TERMINATED as a defendant in this
24 action because Jones has failed to allege any claims against him.

25 **CONCLUSION**

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

- 27 1. The Clerk of the Court shall issue summons and the United States
28 Marshal shall serve, without prepayment of fees, a copy of the operative complaint in this

1 matter (Docket No. 21), all attachments thereto, and a copy of this order upon D. Tyler,
2 nurse at Salinas Valley State Prison. The Clerk shall also mail courtesy copies of the
3 operative complaint and this order to the California Attorney General's Office.

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

7 a. If defendants elect to file a motion to dismiss on the grounds plaintiff
8 failed to exhaust his available administrative remedies as required by 42 U.S.C.
9 § 1997e(a), defendants shall do so in a motion for summary judgment, as required by
10 *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014) (en banc).

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

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

20 4. Defendants shall file a reply brief no later than fifteen (15) days after
21 plaintiff's opposition is filed.

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

24 6. All communications by the plaintiff with the Court must be served on
25 defendants, or defendants' counsel once counsel has been designated, by mailing a true
26 copy of the document to defendants or defendants' counsel.

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

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

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

10 10. A decision from the Ninth Circuit requires that pro se prisoner-plaintiffs be
11 given “notice of what is required of them in order to oppose” summary judgment motions
12 at the time of filing of the motions, rather than when the court orders service of process or
13 otherwise before the motions are filed. *Woods v. Carey*, 684 F.3d 934, 939-41 (9th Cir.
14 2012). Defendants shall provide the following notice to plaintiff when they file and serve
15 any motion for summary judgment:

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

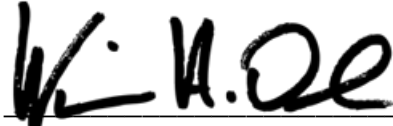
20 Rule 56 tells you what you must do in order to oppose a motion for summary
21 judgment. Generally, summary judgment must be granted when there is no
22 genuine issue of material fact — that is, if there is no real dispute about any
23 fact that would affect the result of your case, the party who asked for
24 summary judgment is entitled to judgment as a matter of law, which will end
25 your case. When a party you are suing makes a motion for summary
26 judgment that is properly supported by declarations (or other sworn
27 testimony), you cannot simply rely on what your complaint says. Instead,
28 you must set out specific facts in declarations, depositions, answers to
interrogatories, or authenticated documents, as provided in Rule 56(e), that
contradict the facts shown in the defendants’ declarations and documents and
show that there is a genuine issue of material fact for trial. If you do not
submit your own evidence in opposition, summary judgment, if appropriate,

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may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial. *Rand v. Rowland*, 154 F.3d 952, 962–63 (9th Cir. 1998).

IT IS SO ORDERED.

Dated: October 6, 2014



WILLIAM H. ORRICK
United States District Judge