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

10 KEVIN R. SCHRUBB,
11 Plaintiff,

12 vs.

13 A.S. LOPEZ; M. BRYANT,
14 Defendants.
15

No. C 12-0418 JSW (PR)

ORDER OF SERVICE

16
17 **INTRODUCTION**

18 Plaintiff, a California prisoner proceeding pro se, filed this pro se civil rights
19 action pursuant to 42 U.S.C. § 1983 against a number of officials at Pelican Bay State
20 Prison, where Plaintiff was formerly incarcerated. He is granted leave to proceed in a
21 forma pauperis in a separate order. The Court now reviews the complaint and orders it
22 served upon defendants.

23 **DISCUSSION**

24 **I. Standard of Review**

25 Federal courts must engage in a preliminary screening of cases in which prisoners
26 seek redress from a governmental entity or officer or employee of a governmental entity.
27 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss any portion
28 of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon

1 which relief may be granted,” or “seeks monetary relief from a defendant who is immune
2 from such relief.” *Id.* § 1915A(b). Pro se pleadings must be liberally construed.
3 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

4 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement
5 of the claim showing that the pleader is entitled to relief." "Specific facts are not
6 necessary; the statement need only "give the defendant fair notice of what the . . . claim
7 is and the grounds upon which it rests." *Erickson v. Pardus*, 127 S. Ct. 2197, 2200
8 (2007) (citations omitted). Although in order to state a claim a complaint “does not need
9 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his
10 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic
11 recitation of the elements of a cause of action will not do. . . . Factual allegations must
12 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
13 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer
14 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. The
15 United States Supreme Court has recently explained the “plausible on its face” standard
16 of *Twombly*: “[w]hile legal conclusions can provide the framework of a complaint, they
17 must be supported by factual allegations. When there are well-pleaded factual
18 allegations, a court should assume their veracity and then determine whether they
19 plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1950
20 (2009).

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

25 **II. Plaintiff's Claims**

26 Plaintiff alleges that Defendants Lopez and Bryant, two PBSP officials, housed
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1 him in a cell with an inmate with a history of attacks on other inmates. The inmate
2 attacked Plaintiff with a knife and an electrical adapter and severely injured him. When
3 liberally construed, these allegations state a cognizable claim for the violation of
4 Plaintiff's Eighth Amendment rights.

5 CONCLUSION

6 For the foregoing reasons,

7 1. The Clerk of the Court shall issue summons and the United States Marshal
8 shall serve, without prepayment of fees, a copy of the complaint and all attachments
9 thereto, and a copy of this order upon Defendants: **A.S. Lopez and M. Bryant at**
10 **Pelican Bay State Prison.**

11 The Clerk shall also mail a courtesy copy of the complaint and this order to the
12 California Attorney General's Office.

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

14 2. Defendants shall answer the complaint in accordance with the Federal
15 Rules of Civil Procedure.

16 3. In order to expedite the resolution of this case, the Court orders as follows:
17 a. No later than **ninety (90) days** from the date this order is filed,
18 Defendants shall either file a motion for summary judgment or other dispositive motion,
19 or a notice to the Court that they are of the opinion that this matter cannot be resolved by
20 dispositive motion. The motion shall be supported by adequate factual documentation
21 and shall conform in all respects to Federal Rule of Civil Procedure 56.

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

26 All papers filed with the Court shall be promptly served on the Plaintiff.
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1 b. Plaintiff's opposition to the dispositive motion, if any, shall be filed
2 with the court and served upon defendants no later than thirty days from the date of
3 service of the motion. Plaintiff must read the attached page headed "NOTICE --
4 WARNING," which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-
5 954 (9th Cir. 1998) (en banc), and *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir.
6 1988).

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

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

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

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

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

21 6. All communications by Plaintiff with the Court must be served on
22 Defendant, or Defendant's counsel once counsel has been designated, by mailing a true
23 copy of the document to Defendant or Defendant's counsel.

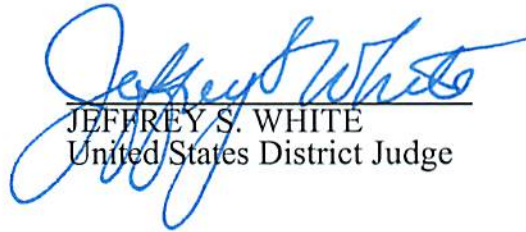
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1 7. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the
2 Court informed of any change of address and must comply with the Court's orders in a
3 timely fashion. Failure to do so may result in the dismissal of this action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

5 IT IS SO ORDERED.

6 DATED: 02/23/2012

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8 JEFFREY S. WHITE
9 United States District Judge

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