

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

HUGO LUA, P-48040,)	
)	
Plaintiff(s),)	No. C 12-1793 CRB (PR)
)	
v.)	ORDER OF SERVICE
)	
NANCY ADAMS, M.D.,)	
)	
Defendant(s).)	

Plaintiff, a prisoner at Pelican Bay State Prison (PBSP), has filed a pro se complaint under 42 U.S.C. § 1983 alleging improper medical care for severe nerve pain. Plaintiff specifically alleges that Dr. Nancy Adams improperly discontinued his long-term pain medication despite his protests and medical history of severe nerve pain due to multiple herniated spinal discs.

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).

1 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
3 United States was violated, and (2) that the alleged violation was committed by a
4 person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48
5 (1988).

6 B. Legal Claims

7 Deliberate indifference to serious medical needs violates the Eighth
8 Amendment's proscription against cruel and unusual punishment. See Estelle v.
9 Gamble, 429 U.S. 97, 104 (1976). Such indifference may appear when prison
10 officials deny, delay or intentionally interfere with medical treatment, or it may
11 be shown in the way in which prison officials provide medical care. See
12 McGuckin v. Smith, 974 F.2d 1050, 1062 (9th Cir. 1992) (delay of seven months
13 in providing medical care during which medical condition was left virtually
14 untreated and plaintiff was forced to endure "unnecessary pain" sufficient to
15 present colorable § 1983 claim), overruled on other grounds, WMX
16 Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc).

17 Liberally construed, plaintiff's allegations that Dr. Nancy Adams
18 discontinued his long-term pain medication despite his protests and medical
19 history of severe nerve pain due to multiple herniated spinal discs present an
20 arguably cognizable § 1983 claim for deliberate indifference to serious medical
21 needs and will be served on Dr. Nancy Adams. See id.

22 **CONCLUSION**

23 For the foregoing reasons and for good cause shown,

24 1. The clerk shall issue summons and the United States Marshal shall
25 serve, without prepayment of fees, copies of the complaint in this matter, all
26 attachments thereto, and copies of this order on Dr. Nancy Adams at PBSP. The
27

1 clerk also shall serve a copy of this order on plaintiff.

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

4 a. No later than 90 days from the date of this order, defendants
5 shall serve and file a motion for summary judgment or other dispositive motion.
6 A motion for summary judgment must be supported by adequate factual
7 documentation and must conform in all respects to Federal Rule of Civil
8 Procedure 56, and must include as exhibits all records and incident reports
9 stemming from the events at issue. A motion for summary judgment also must
10 be accompanied by a Rand notice so that plaintiff will have fair, timely and
11 adequate notice of what is required of him in order to oppose the motion. Woods
12 v. Carey, Nos. 09-15548 & 09-16113, slip op. 7871, 7874 (9th Cir. July 6, 2012)
13 (notice requirement set out in Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998),
14 must be served concurrently with motion for summary judgment). A motion to
15 dismiss for failure to exhaust available administrative remedies similarly must be
16 accompanied by a Wyatt notice. Id. (notice requirement set out in Wyatt v.
17 Terhune, 315 F.3d 1108 (9th Cir. 2003), must be served concurrently with motion
18 to dismiss for failure to exhaust available administrative remedies).

19 If defendants are of the opinion that this case cannot be resolved by
20 summary judgment or other dispositive motion, they shall so inform the court
21 prior to the date their motion is due. All papers filed with the court shall be
22 served promptly on plaintiff.

23 b. Plaintiff must serve and file an opposition or statement of
24 non-opposition to the dispositive motion not more than 28 days after the motion
25 is served and filed.

26 c. Plaintiff is advised that a motion for summary judgment
27
28

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

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

23 (The Rand and Wyatt notices above do not excuse defendants' obligation
24 to serve said notices again concurrently with motions to dismiss for failure to
25 exhaust available administrative remedies and motions for summary judgment.
26 Woods, slip op. at 7874.)
27
28

1 d. Defendants must serve and file a reply to an opposition not
2 more than 14 days after the opposition is served and filed.

3 e. The motion shall be deemed submitted as of the date the
4 reply is due. No hearing will be held on the motion unless the court so orders at a
5 later date.

6 3. Discovery may be taken in accordance with the Federal Rules of
7 Civil Procedure. No further court order is required before the parties may
8 conduct discovery.

9 4. All communications by plaintiff with the court must be served on
10 defendants, or defendants' counsel once counsel has been designated, by mailing
11 a true copy of the document to defendants or defendants' counsel.

12 5. It is plaintiff's responsibility to prosecute this case. Plaintiff must
13 keep the court and all parties informed of any change of address and must comply
14 with the court's orders in a timely fashion. Failure to do so may result in the
15 dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b).

16 SO ORDERED.

17 DATED: July 12, 2012

18 

19 CHARLES R. BREYER
20 United States District Judge
21
22
23
24
25
26