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\*E-Filed 8/27/12\*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

United States District Court  
For the Northern District of California

ROBERT BRYANT,

Plaintiff,

v.

MATTHEW CATE, et al.,

Defendants.

No. C 12-2191 RS (PR)

**ORDER OF SERVICE;**

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

**INSTRUCTIONS TO CLERK**

**INTRODUCTION**

This is a federal civil rights action filed pursuant to 42 U.S.C. § 1983 by a *pro se* state prisoner. The Court now reviews the complaint pursuant to 28 U.S.C. § 1915A(a). Defendants are directed to file a dispositive motion or notice regarding such motion on or before November 25, 2012, unless an extension is granted. **The Court further directs that defendants are to adhere to the new notice provisions detailed in Section 10 of the conclusion of this order.**



1 protection under the Fourteenth Amendment. Liberally construed, these claims are  
2 cognizable under § 1983. The Court declines to exercise jurisdiction over his state law  
3 claims, which are hereby DISMISSED without prejudice.

4 **CONCLUSION**

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

6 1. The Clerk of the Court shall issue summons and the United States  
7 Marshal shall serve, without prepayment of fees, a copy of the complaint in this matter, all  
8 attachments thereto, and a copy of this order upon Matthew Cate, Secretary of the California  
9 Department of Corrections and Rehabilitation, and R. Grounds, W.J. Wilson, and A. Amaya,  
10 employees of Soledad State Prison. The Clerk shall also mail courtesy copies of the  
11 complaint and this order to the California Attorney General's Office.

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

15 a. If defendants elect to file a motion to dismiss on the grounds plaintiff  
16 failed to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a),  
17 defendants shall do so in an unenumerated Rule 12(b) motion pursuant to *Wyatt v. Terhune*,  
18 315 F.3d 1108, 1119–20 (9th Cir. 2003), cert. denied *Alameida v. Terhune*, 540 U.S. 810  
19 (2003).

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

26 3. Plaintiff's opposition to the dispositive motion shall be filed with the Court and  
27 served on defendants no later than forty-five (45) days from the date defendants' motion is  
28

1 filed.

2 a. In the event the defendants file an unenumerated motion to dismiss  
3 under Rule 12(b), plaintiff is hereby cautioned as follows:

4 The defendants have made a motion to dismiss pursuant to Rule 12(b) of the  
5 Federal Rules of Civil Procedure, on the ground you have not exhausted your administrative  
6 remedies. The motion will, if granted, result in the dismissal of your case. When a party you  
7 are suing makes a motion to dismiss for failure to exhaust, and that motion is properly  
8 supported by declarations (or other sworn testimony) and/or documents, you may not simply  
9 rely on what your complaint says. Instead, you must set out specific facts in declarations,  
10 depositions, answers to interrogatories, or documents, that contradict the facts shown in the  
11 defendant's declarations and documents and show that you have in fact exhausted your  
12 claims. If you do not submit your own evidence in opposition, the motion to dismiss, if  
13 appropriate, may be granted and the case dismissed.

14 b. In the event defendants file a motion for summary judgment,  
15 the Ninth Circuit has held that the following notice should be given to plaintiffs:

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 Rule  
18 56 of the Federal Rules of Civil Procedure will, if granted, end your case.  
19 Rule 56 tells you what you must do in order to oppose a motion for summary  
20 judgment. Generally, summary judgment must be granted when there is no  
21 genuine issue of material fact — that is, if there is no real dispute about any  
22 fact that would affect the result of your case, the party who asked for summary  
23 judgment is entitled to judgment as a matter of law, which will end your case.  
24 When a party you are suing makes a motion for summary judgment that is  
25 properly supported by declarations (or other sworn testimony), you cannot  
26 simply rely on what your complaint says. Instead, you must set out specific  
27 facts in declarations, depositions, answers to interrogatories, or authenticated  
28 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, may be entered against you. If summary  
judgment is granted in favor of defendants, your case will be dismissed and  
there will be no trial. *See Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998)  
(en banc). Plaintiff is advised to read Rule 56 of the Federal Rules of Civil  
Procedure and *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (holding party  
opposing summary judgment must come forward with evidence showing  
triable issues of material fact on every essential element of his claim). Plaintiff  
is cautioned that failure to file an opposition to defendants' motion for

1 summary judgment may be deemed to be a consent by plaintiff to the granting  
2 of the motion, and granting of judgment against plaintiff without a trial. *See*  
3 *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (per curiam); *Brydges v.*  
4 *Lewis*, 18 F.3d 651, 653 (9th Cir. 1994).

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

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

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

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

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

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

21 10. A recent decision from the Ninth Circuit requires that *pro se* prisoner-plaintiffs  
22 be given "notice of what is required of them in order to oppose" summary judgment motions  
23 at the time of filing of the motions, rather than when the court orders service of process or  
24 otherwise before the motions are filed. *Woods v. Carey*, No. 09-15548, slip op. 7871, 7874  
25 (9th Cir. July 6, 2012). **Defendants shall provide the following notice to plaintiff when**  
26 **they file and serve any motion for summary judgment:**

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

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Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact — that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, 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, 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: August 27, 2012

  
RICHARD SEEBORG  
United States District Judge