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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEVE CRUMP,

No. C-12-4357 EMC (pr)

Plaintiff,

v.

ORDER OF SERVICE

Warden GREGORY AHERN; Alameda
Sheriff M. GORDON,

Defendants.

I. INTRODUCTION

Steve Crump, formerly in custody at the Alameda County Jail and now in custody at the Atascadero State Hospital, filed this *pro se* civil rights action under 42 U.S.C. § 1983. His complaint is now before the Court for review under 28 U.S.C. § 1915A.

II. BACKGROUND

In his complaint, Mr. Crump alleges that he was harassed and threatened by Alameda County Sheriff's Deputy M. Gordon on or about June 23, 2012. Mr. Crump alleges that he had filed a notice of appeal in the Ninth Circuit Court of Appeal complaining that the superior court judge and trial counsel had violated his constitutional rights during trial. He further alleges that deputy Gordon told him that the superior court judge did not appreciate him submitting grievances to the Commission on Judicial Performance along with filing an appeal, and stated "that if [Mr. Crump] continued to do so, not only would [he] be 'lynched in [his] cell,' but that physical harm would be brought to [his] family as well." Docket # 4, p. 3. Mr. Crump alleges he is in fear for his own and his family's safety. He

1 alleges "this is inappropriate behavior coming from officer Gordon and Warden Gregory Ahern
2 should be held responsible for deputy Gordon's actions." *Id.*

3 **III. DISCUSSION**

4 A federal court must engage in a preliminary screening of any case in which a prisoner seeks
5 redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C.
6 § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims
7 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
8 monetary relief from a defendant who is immune from such relief. *See id.* at § 1915A(b). *Pro*
9 *se* pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699
10 (9th Cir. 1990).

11 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right
12 secured by the Constitution or laws of the United States was violated and (2) that the violation was
13 committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48
14 (1988).

15 "Within the prison context, a viable claim of First Amendment retaliation entails five basic
16 elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because
17 of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his
18 First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional
19 goal." *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote omitted). Liberally
20 construed, the *pro se* complaint states a cognizable retaliation claim against deputy Gordon, who
21 allegedly threatened Mr. Crump with harm in response to Mr. Crump's filing of a grievance and
22 court action.

23 Mr. Crump alleges that Sheriff Ahern "should be held responsible for deputy Gordon's
24 actions." Docket # 4, p. 3. Sheriff Ahern has no liability based merely on the fact that one of his
25 deputies allegedly committed the constitutional tort. A supervisor may be liable under section 1983
26 upon a showing of (1) personal involvement in the constitutional deprivation or (2) a sufficient
27 causal connection between the supervisor's wrongful conduct and the constitutional violation.

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1 *Henry A. v. Willden*, 678 F.3d 991, 1003-04 (9th Cir. 2012). The complaint does not make any such
2 allegations against the Sheriff.

3 **IV. CONCLUSION**

4 1. The complaint states a cognizable § 1983 claim against Alameda County Sheriff's
5 Deputy M. Gordon for retaliation. All other claims and Defendants are dismissed.

6 2. The Clerk shall issue a summons and the United States Marshal shall serve, without
7 prepayment of fees, the summons, a copy of the complaint and a copy of all the documents in the
8 case file upon deputy M. Gordon, who apparently works at the Santa Rita County Jail.

9 3. In order to expedite the resolution of this case, the following briefing schedule for
10 dispositive motions is set:

11 a. No later than **May 10, 2013**, Defendant must file and serve a motion for
12 summary judgment or other dispositive motion. If Defendant is of the opinion that this case cannot
13 be resolved by summary judgment, Defendant must so inform the Court prior to the date the motion
14 is due. If Defendant files a motion for summary judgment, Defendant must provide to Plaintiff a
15 new *Rand* notice regarding summary judgment procedures at the time he files such a motion.
16 *See Woods v. Carey*, 684 F.3d 934, 939 (9th Cir. 2012). If Defendant files a motion to dismiss for
17 non-exhaustion of administrative remedies, Defendant must provide to Plaintiff a notice regarding
18 motions to dismiss for non-exhaustion procedures at the time he files such a motion. *See Stratton v.*
19 *Buck*, 697 F.3d 1004, 1008 (9th Cir. 2012).

20 b. Plaintiff's opposition to the summary judgment or other dispositive motion
21 must be filed with the Court and served upon Defendant no later than **June 7, 2013**. Plaintiff must
22 bear in mind the notice and warning regarding summary judgment provided later in this order as he
23 prepares his opposition to any motion for summary judgment. Plaintiff also must bear in mind the
24 notice and warning regarding motions to dismiss for non-exhaustion provided later in this order as
25 he prepares his opposition to any motion to dismiss.

26 c. If Defendant wishes to file a reply brief, the reply brief must be filed and
27 served no later than **June 21, 2013**.

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1 4. Plaintiff is provided the following notices and warnings about the procedures for
2 motions for summary judgment and motions to dismiss for non-exhaustion of administrative
3 remedies:

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

15 The defendants may file a motion to dismiss for failure to exhaust
16 administrative remedies instead of, or in addition to, a motion for
17 summary judgment. A motion to dismiss for failure to exhaust
18 administrative remedies is similar to a motion for summary judgment
19 in that the court will consider materials beyond the pleadings. You
20 have the right to present any evidence you may have which tends to
21 show that you did exhaust your administrative remedies or were
22 excused from doing so. The evidence may be in the form of
23 declarations (that is, statements of fact signed under penalty of
24 perjury) or authenticated documents (that is, documents accompanied
25 by a declaration showing where they came from and why they are
26 authentic), or discovery documents such as answers to interrogatories
27 or depositions. In considering a motion to dismiss for failure to
28 exhaust, the court can decide disputed issues of fact with regard to this
portion of the case. If defendants file a motion to dismiss and it is
granted, your case will be dismissed and there will be no trial. *See*
generally Stratton v. Buck, 697 F.3d at 1008.

24 5. All communications by Plaintiff with the Court must be served on a Defendant's
25 counsel by mailing a true copy of the document to Defendant's counsel. The Court may disregard
26 any document which a party files but fails to send a copy of to his opponent. Until a Defendant's
27 counsel has been designated, Plaintiff may mail a true copy of the document directly to Defendant,
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1 but once a Defendant is represented by counsel, all documents must be mailed to counsel rather than
2 directly to that Defendant.


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

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

11 8. Plaintiff is cautioned that he must include the case name and case number for this
12 case on any document he submits to the Court for consideration in this case.

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14 IT IS SO ORDERED.

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16 Dated: February 6, 2013

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18 EDWARD M. CHEN
19 United States District Judge

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