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

KIRK DOUGLAS WILLIAMS,)	No. C 12-4707 JSW (PR)
)	
Plaintiff,)	ORDER SCHEDULING
)	DISPOSITIVE MOTIONS
v.)	
)	
K. TILLEY,)	
)	
Defendant.)	
_____)	

INTRODUCTION

Plaintiff, a California prisoner proceeding pro se, filed this civil rights complaint in state court alleging that Defendant, an employee of Salinas Valley State Prison, violated Plaintiff’s constitutional rights. Defendant removed the case to this court. This Court now reviews the complaint pursuant to 28 U.S.C. § 1915A and sets fort a briefing schedule for filing an answer and a dispositive motion.

DISCUSSION

I. 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

1 defendant who is immune from such relief.” *Id.* § 1915A(b). Pro se pleadings must be
2 liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.
3 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. Pro se
15 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696,
16 699 (9th Cir. 1990).

17 "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need
18 detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds of his
19 ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic
20 recitation of the elements of a cause of action will not do. . . . Factual allegations must
21 be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at
22 553-56. A motion to dismiss should be granted if the complaint does not proffer "enough
23 facts to state a claim for relief that is plausible on its face." *Id.* at 570. This standard
24 applies to all cases. *See, e.g., Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1952 (2009) (finding
25 under *Twombly* and Rule 8 of the Federal Rules of Civil Procedure, that complainant-
26 detainee in a *Bivens* action failed to plead sufficient facts “plausibly showing” that top
27 federal officials “purposely adopted a policy of classifying post-September-11 detainees
28 as ‘of high interest’ because of their race, religion, or national origin” over more likely

1 and non-discriminatory explanations). From these decisions, the following “two
2 principles” arise: “First to be entitled to the presumption of truth, allegations in a
3 complaint or counterclaim may not simply recite the elements of a cause of action but
4 must contain sufficient allegations of underlying facts to give fair notice and to enable
5 the opposing party to defend itself effectively. Second, the factual allegations that are
6 taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to
7 require the opposing party to be subjected to the expense of discovery and continued
8 litigation.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

9 II. Legal Claims

10 When liberally construed, Plaintiff’s allegations state cognizable claims against
11 Defendant for violating his Eighth Amendment rights by denying him a meal, for
12 violating his First Amendment rights by retaliating against him for filing administrative
13 appeals, and for violating his constitutional right to access the courts by denying him
14 administrative appeals forms.

15 **CONCLUSION**

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

17 1. Defendant shall file an answer to the complaint within **28 days**.

18 2. In order to expedite the resolution of this case:

19 a. No later than **84 days** from the date this order is filed, defendant shall
20 file a motion for summary judgment or other dispositive motion. If defendant is of the
21 opinion that this case cannot be resolved by summary judgment, he shall so inform the
22 court prior to the date the summary judgment motion is due. All papers filed with the
23 court shall be promptly served on the plaintiff.

24 b. Plaintiff’s opposition to the dispositive motion, if any, shall be filed with
25 the court and served upon defendant no later than **28 days** from the date of service of the
26 motion. Plaintiff must read the attached page headed “NOTICE -- WARNING,” which
27 is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998)
28 (en banc), and *Klingele v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

1 If defendants file an unenumerated motion to dismiss claiming that plaintiff failed
2 to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a),
3 plaintiff should take note of the attached page headed "NOTICE -- WARNING
4 (EXHAUSTION)," which is provided to him as required by *Wyatt v. Terhune*, 315 F.3d
5 1108, 1120 n. 4 (9th Cir.), *cert. denied*, *Alameida v. Wyatt*, 124 S.Ct 50 (2003).

6 c. Defendants **shall** file a reply brief no later than **14 days** after the date of
7 service of the opposition.

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

10 e. Along with their motion, defendants shall proof that they served
11 plaintiff the applicable warning(s) required by *Woods v. Carey*, No. 09-15548, slip op.
12 7871 (9th Cir. July 6, 2012) and/or *Stratton v. Buck*, No. 10-35656, slip op. 11477 (9th
13 Cir. Sept. 19, 2012), at the same time they served him with their motion. Failure to do so
14 will result in the summary dismissal of their motion without prejudice.


15 5. All communications by the plaintiff with the court must be served on
16 defendant, or defendant's counsel once counsel has been designated, by mailing a true
17 copy of the document to defendant or defendant's counsel.

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

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

25 IT IS SO ORDERED.

26 DATED: October 25, 2012

27 
28 JEFFREY S. WHITE
United States District Judge

1 **NOTICE -- WARNING (SUMMARY JUDGMENT)**

2 If defendants move for summary judgment, they are seeking to have your case
3 dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil
4 Procedure will, if granted, end your case.

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

17 **NOTICE -- WARNING (EXHAUSTION)**

18 If defendants file a motion to dismiss for failure to exhaust administrative remedies, they
19 are seeking to have your case dismissed. If the motion is granted it will end your case and there
20 will be no trial.

21 A motion to dismiss for failure to exhaust administrative remedies is similar to a motion
22 for summary judgment in that the court will consider materials beyond the pleadings. You have
23 the right to present any evidence you may have which tends to show that you did exhaust your
24 administrative remedies. Such evidence may be in the form of declarations (statements signed
25 under penalty of perjury) or authenticated documents, that is, documents accompanied by a
26 declaration showing where they came from and why they are authentic, or other sworn papers,
27 such as answers to interrogatories or depositions. In considering a motion to dismiss for failure
28 to exhaust administrative remedies, the court can decide disputed factual matters with regard to
the exhaustion question. Because the court can resolve factual disputes, unlike a summary
judgment opposition, it is not enough to merely show a genuine issue of material fact in
opposition to the motion to dismiss.

1
2 UNITED STATES DISTRICT COURT
3 FOR THE
4 NORTHERN DISTRICT OF CALIFORNIA
5

6 WILLIAMS,

7 Plaintiff,

8 v.

9 TILLEY et al,

10 Defendant.
_____ /

Case Number: CV12-04707 JSW

CERTIFICATE OF SERVICE

11
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on October 25, 2012, I SERVED a true and correct copy(ies) of the attached, by placing
15 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
16 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
17 delivery receptacle located in the Clerk's office.

18 Kirk Douglas Williams F-44523
19 Salinas Valley State Prison
20 P.O. Box 1050
21 Soledad, CA 93960

22 Dated: October 25, 2012



23 Richard W. Wieking, Clerk
24 By: Jennifer Ottolini, Deputy Clerk
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