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5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
7

8 PATRICK JACKSON,
9 Plaintiff,

No. C 12-6049 SI (pr)

**ORDER OF SERVICE AND PARTIAL
DISMISSAL**

10 v.

11 DONALD POMPAN, Physician; et al.,
12 Defendants.
13 _____/

14 A. The Pleading And Motion For Reconsideration

15 Patrick Jackson filed this *pro se* civil rights action under 42 U.S.C. § 1983 to complain
16 about conditions of confinement at Salinas Valley State Prison, where he previously was
17 incarcerated. Upon initial review, the court determined that the complaint only stated a
18 cognizable claim against defendant Dr. Pompan for the alleged delay in ordering an MRI for
19 Jackson. The court dismissed the complaint with leave to amend so that Jackson could attempt
20 to cure deficiencies in the several other claims he attempted to plead.

21 Jackson did not file an amended complaint; instead, he filed a "motion for reconsideration
22 and concession" (Docket # 9) in which he expressed disagreement with the court's determination
23 that claims for relief were not stated with regard to Dr. Pompan's discharge of Jackson from
24 hospital care after his knee surgery, C/O Hernandez's failure to obtain a wheelchair to take him
25 to an appointment which he was able to attend the next day, and the retaliatory transfer
26 allegations.

27 Upon due consideration, the motion for reconsideration is DENIED. (Docket # 9.) The
28 rulings in the order of dismissal with partial leave to amend were legally correct, and Jackson

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1 has provided no new factual allegations to warrant a change in the legal analysis of any of the
2 claims. The court does not construe the motion for reconsideration to be an amended complaint
3 because it does not make any new factual allegations and instead endeavors to show error in the
4 court's analysis of the original complaint. As no amended complaint was filed, the case will
5 proceed with the one cognizable claim in the original complaint, i.e., that Dr. Pompan was
6 deliberately indifferent in his delay in ordering an MRI for Jackson.

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8 B. Service of Process and Scheduling

9 1. The complaint, liberally construed, states a cognizable § 1983 claim against
10 defendant Dr. Donald Pompan for a violation of plaintiff's Eighth Amendment rights. All other
11 claims and defendants are dismissed.

12 2. The clerk shall issue a summons and the United States Marshal shall serve, without
13 prepayment of fees, the summons, a copy of the complaint and a copy of all the documents in
14 the case file upon Dr. Donald Pompan at Salinas Valley State Prison.

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

17 a. No later than **August 2, 2013**, defendant must file and serve a motion for
18 summary judgment or other dispositive motion. If defendant is of the opinion that this case
19 cannot be resolved by summary judgment, defendant must so inform the court prior to the date
20 the motion is due. If defendant files a motion for summary judgment, defendant must provide
21 to plaintiff a new *Rand* notice regarding summary judgment procedures at the time he files such
22 a motion. *See Woods v. Carey*, 684 F.3d 934, 939 (9th Cir. 2012). If defendant files a motion to
23 dismiss for non-exhaustion of administrative remedies, defendant must provide to plaintiff a
24 notice regarding motions to dismiss for non-exhaustion procedures at the time he files such a
25 motion. *See Stratton v. Buck*, 697 F.3d 1004, 1008 (9th Cir. 2012).

26 b. Plaintiff's opposition to the summary judgment or other dispositive motion
27 must be filed with the court and served upon defendant no later than **August 30, 2013**. Plaintiff
28 must bear in mind the notice and warning regarding summary judgment provided later in this

1 order as he prepares his opposition to any motion for summary judgment. Plaintiff also must
2 bear in mind the notice and warning regarding motions to dismiss for non-exhaustion provided
3 later in this order as he prepares his opposition to any motion to dismiss.

4 c. If defendant wishes to file a reply brief, the reply brief must be filed and
5 served no later than **September 13, 2013**.

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

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

25 The defendants may file a motion to dismiss for failure to exhaust administrative
26 remedies instead of, or in addition to, a motion for summary judgment. A motion to
27 dismiss for failure to exhaust administrative remedies is similar to a motion for summary
28 judgment in that the court will consider materials beyond the pleadings. You have the
right to present any evidence you may have which tends to show that you did exhaust
your administrative remedies or were excused from doing so. The evidence may be in
the form of declarations (that is, statements of fact signed under penalty of perjury) or
authenticated documents (that is, documents accompanied by a declaration showing
where they came from and why they are authentic), or discovery documents such as
answers to interrogatories or depositions. In considering a motion to dismiss for failure
to 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 1008-09.

5. All communications by plaintiff with the court must be served on a defendant's
counsel by mailing a true copy of the document to defendant's counsel. The court may disregard
any document which a party files but fails to send a copy of to his opponent. Until a defendant's
counsel has been designated, plaintiff may mail a true copy of the document directly to

1 defendant, but once a defendant is represented by counsel, all documents must be mailed to
2 counsel rather than directly to that defendant.


3 6. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
4 No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16 is
5 required 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
9 pursuant to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of
10 address in every 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 this court for consideration in this case.

13 IT IS SO ORDERED.

14 Dated: May 20, 2013



SUSAN ILLSTON
United States District Judge