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

VINCENT E. COFIELD,)	No. C 13-1421 JSW (PR)
)	
Plaintiff,)	ORDER OF SERVICE
)	
v.)	
)	
LINDSAY B. WALSH,)	
)	
Defendant.)	

INTRODUCTION

Plaintiff, a California prisoner at the California Training Facility (“CTF”), filed this pro se civil rights complaint under 42 U.S.C. § 1983. His application to proceed *in forma pauperis* is granted in a separate order. The complaint is ordered served upon Defendant.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although in order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic

1 recitation of the elements of a cause of action will not do. . . . Factual allegations must
2 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
3 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer
4 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se
5 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
6 699 (9th Cir. 1990).

7 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:

8 (1) that a right secured by the Constitution or laws of the United States was violated, and
9 (2) that the alleged violation was committed by a person acting under the color of state
10 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

11 LEGAL CLAIMS

12 Plaintiff alleges that Defendant Lindsay B. Walsh, a Deputy District Attorney at
13 the Alameda County District Attorney's Office, wrote a memorandum recommending to
14 prison officials that a restriction be placed upon Plaintiff's custody status. This
15 recommendation was based upon events described by Walsh in the memorandum,
16 including Plaintiff's sexual assault of a woman. Plaintiff alleges that Walsh's
17 recommendation has caused him to suffer restrictions in prison and to be moved to an
18 institution far from family members. Plaintiff claims that Walsh's recommendation
19 violates his plea agreement and his right to due process. When liberally construed, the
20 claims are cognizable.

21 CONCLUSION

22 For the reasons set out above, the Court orders as follows:

23 1. The Clerk of the Court shall issue summons and the United States Marshal
24 shall serve, without prepayment of fees, a copy of the complaint and all attachments
25 thereto, and a copy of this order upon Defendant Deputy District Attorney Lindsay B.
26 Walsh.

27 The Clerk shall also mail a courtesy copy of the complaint with all attachments
28 thereto, and this order to the Alameda County Counsel's Office.

1 The Clerk shall also serve a copy of this order on Plaintiff.

2 2. Defendants shall file an answer to the complaint in accordance with the
3 Federal Rules of Civil Procedure.

4 3. In order to expedite the resolution of this case:

5 a. No later than **91 days** from the date this order is filed, defendants shall
6 file a motion for summary judgment or other dispositive motion. If defendants are of the
7 opinion that this case cannot be resolved by summary judgment, they shall so inform the
8 court prior to the date the summary judgment motion is due. All papers filed with the
9 court shall be promptly served on the plaintiff.

10 b. Plaintiff's opposition to the dispositive motion, if any, shall be filed with
11 the court and served upon defendants no later than **28 days** from the date of service of
12 the motion. Plaintiff must read the attached page headed "NOTICE -- WARNING,"
13 which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir.
14 1998) (en banc), and *Klingele v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

15 If defendants file an unenumerated motion to dismiss claiming that plaintiff failed
16 to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a),
17 plaintiff should take note of the attached page headed "NOTICE -- WARNING
18 (EXHAUSTION)," which is provided to him as required by *Wyatt v. Terhune*, 315 F.3d
19 1108, 1120 n. 4 (9th Cir.), *cert. denied*, *Alameida v. Wyatt*, 124 S.Ct 50 (2003).

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

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

24 e. Along with their motion, defendants shall proof that they served
25 plaintiff the applicable warning(s) required by *Woods v. Carey*, No. 09-15548, slip op.
26 7871 (9th Cir. July 6, 2012) and/or *Stratton v. Buck*, No. 10-35656, slip op. 11477 (9th
27 Cir. Sept. 19, 2012), at the same time they served him with their motion. Failure to do so
28 will result in the summary dismissal of their motion without prejudice.

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

5 VINCENT E. COFIELD,
6 Plaintiff,

Case Number: CV13-01421 JSW

7 **CERTIFICATE OF SERVICE**

8 v.

9 LINDSAY B. WALSH et al,
10 Defendant.

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

13 That on May 2, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
16 receptacle located in the Clerk's office.

17 Vincent E. Cofield
18 #G31012
19 HDSP
20 P.O. Box 3030
21 Susanville, CA 96127

22 Dated: May 2, 2013


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