

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RALPH A. TAYLOR,
Plaintiffs,

v.

EDMUND G. BROWN, JR. Governor, et al.,
Defendants.

Case No. [14-0647-VC \(PR\)](#)

**ORDER SERVING COGNIZABLE
CLAIMS**

Ralph A. Taylor, an inmate at Pelican Bay State Prison (“Pelican Bay”) proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging constitutional violations against defendants employed at Pelican Bay. On May 15, 2014, the Court reviewed Taylor’s first amended complaint and found that he had stated a cognizable First Amendment claim for damages against D. Milligan, G. Pimentel and G.D. Lewis and that he had stated a cognizable First Amendment claim for injunctive relief against Lewis, in his official capacity. The Court dismissed without leave to amend Taylor’s class claims and claims based upon the denial of administrative appeals. The Court dismissed with leave to amend Taylor’s Equal Protection claims and First Amendment claims against all defendants other than Milligan, Pimentel and Lewis. The Court allowed Taylor twenty-one days from the date of the Order to file an amended complaint.

On June 5, 2014, the Court received Taylor’s Second Amended Complaint (“SAC”), which was docketed on June 25, 2014. Doc. no. 14. The Court now reviews Taylor’s SAC to determine if it has remedied the deficiencies noted in the Court’s May 15, 2014 Order.

DISCUSSION

I. First Amendment Claim

The Court dismissed Taylor’s First Amendment claim with leave to amend against all defendants other than Milligan, Pimentel and Lewis. The SAC does not include allegations

1 against any other defendant. Therefore, the First Amendment claim against all other defendants is
2 now dismissed without leave to amend.

3 **II. Equal Protection Claim**

4 The Court dismissed Taylor's Equal Protection claim because the allegations did not make
5 clear whether he was claiming discrimination based on his race or his membership in an
6 ideological movement and because his allegations did not indicate that any specific defendant
7 intentionally discriminated against him on either basis.

8 The SAC alleges the following:

9 Pelican Bay Warden Lewis has established a policy and practice that bans New Afrikan
10 culture, history, heritage, tradition, custom and identity. This policy and practice discriminates
11 against Taylor based upon his New Afrikan race and culture. The policy claims that Taylor's New
12 Afrikan race and cultural tenets constitute Black Guerrilla Family prison gang activity, but no
13 evidence supports this claim. The discriminatory policy and practice consists of the confiscation
14 of all books, publications and written materials pertaining to the New Afrikan race and cultural
15 tenets.

16 Pursuant to this policy, Defendants D. Milligan and G. Pimentel conducted a search of
17 Taylor's cell pursuant to a six year review into his status as a member of the Black Guerilla
18 Family and confiscated Taylor's books, manuscripts, pamphlets and other written material related
19 to Taylor's New Afrikan race and cultural tenets. Defendants stated that these writings were gang-
20 related material, but they were not used in validating Taylor as an active member of the Black
21 Guerilla Family.

22 Liberally construed, the SAC appears to allege an Equal Protection claims for damages
23 against Milligan and Pimentel for discriminating against Taylor by confiscating his New Afrikan
24 written material. Liberally construed, the SAC appear to allege a claim against Warden Lewis, in
25 his individual capacity, for establishing a pattern and practice that violates Taylor's Equal
26 Protection rights to be able to read and express views about his racial and cultural beliefs.
27 Liberally construed, the SAC also appears to state a claim against Warden Lewis, in his official
28 capacity, for establishing a policy and practice that discriminates against Taylor based upon his

1 racial/cultural New Afrikan beliefs and practices.

2 **CONCLUSION**

3 Based on the foregoing, the Court orders as follows:

4 1. Taylor's First Amendment claim against all defendants other than Milligan, Pimentel
5 and Lewis is dismissed without leave to amend. The SAC states a cognizable Equal Protection
6 claim against Milligan, Pimentel and Lewis.

7 2. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of
8 Service of Summons, two copies of the Waiver of Service of Summons, a copy of the SAC
9 (docket no. 14) and all attachments thereto, and a copy of this Order and the Order of Dismissal
10 with Leave to Amend (docket no. 13) to D. Milligan, G. Pimentel and Warden G.D. Lewis in his
11 individual and official capacities at Pelican Bay State Prison. The Clerk shall also mail a courtesy
12 copy of the SAC with all attachments and a copy of this Order and the Order of Dismissal with
13 Leave to Amend (docket no. 13) to the California Attorney General's Office and a copy of this
14 Order to Plaintiff.

15 3. Defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure require
16 them to cooperate in saving unnecessary costs of service of the summons and complaint. Pursuant
17 to Rule 4, if Defendants, after being notified of this action and asked by the Court, on behalf of
18 Plaintiff, to waive service of the summons, fail to do so, they will be required to bear the cost of
19 such service unless good cause be shown for their failure to sign and return the waiver forms. If
20 service is waived, this action will proceed as if Defendants had been served on the date that the
21 waiver is filed, except that pursuant to Rule 12(a)(1)(B), Defendants will not be required to serve
22 and file an answer before sixty days from the date on which the request for waiver was sent. (This
23 allows a longer time to respond than would be required if formal service of summons is
24 necessary.)

25 Defendants are advised to read the statement set forth at the foot of the waiver form that
26 more completely describes the duties of the parties with regard to waiver of service of the
27 summons. If service is waived after the date provided in the Notice but before Defendants have
28 been personally served, the answer shall be due sixty days from the date on which the request for

1 waiver was sent or twenty days from the date the waiver form is filed, whichever is later.

2 4. The following briefing schedule shall govern dispositive motions in this action:

3 a. No later than thirty days from the date the answer is due, Defendants shall file a
4 motion for summary judgment or other dispositive motion. If Defendants file a motion for
5 summary judgment, it shall be supported by adequate factual documentation and shall conform in
6 all respects to Federal Rule of Civil Procedure 56. If Defendants are of the opinion that this case
7 cannot be resolved by summary judgment, they shall so inform the Court prior to the date the
8 summary judgment motion is due. All papers filed with the Court shall be promptly served on
9 Plaintiff.

10 At the time of filing the motion for summary judgment or other dispositive motion,
11 Defendants shall comply with the Ninth Circuit's decision in *Woods v. Carey*, 684 F.3d 934 (9th
12 Cir. 2012), and provide Plaintiff with notice of what is required of him to oppose a summary
13 judgment motion.

14 b. Plaintiff's opposition to the motion for summary judgment or other dispositive
15 motion shall be filed with the Court and served on Defendants no later than twenty-eight days
16 after the date on which Defendants' motion is filed.

17 Before filing his opposition, Plaintiff is advised to read the notice that will be provided to
18 him by Defendants when the motion is filed, and Rule 56 of the Federal Rules of Civil Procedure
19 and *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (party opposing summary judgment must come
20 forward with evidence showing triable issues of material fact on every essential element of his
21 claim). Plaintiff is cautioned that because he bears the burden of proving his allegations in this
22 case, he must be prepared to produce evidence in support of those allegations when he files his
23 opposition to Defendants' summary judgment motion. Such evidence may include sworn
24 declarations from himself and other witnesses, and copies of documents authenticated by sworn
25 declaration. Plaintiff will not be able to avoid summary judgment simply by repeating the
26 allegations of his complaint.

27 c. Defendants shall file a reply brief no later than fourteen days after the date
28 Plaintiff's opposition is filed.

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

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

6 6. All communications by Plaintiff with the Court must be served on Defendants, or
7 Defendants' counsel once counsel has been designated, by mailing a true copy of the document to
8 Defendants or counsel.

9 7. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
10 informed of any change of address by filing a separate paper with the clerk headed "Notice of
11 Change of Address," and must comply with the Court's orders in a timely fashion. Failure to do so
12 may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil
13 Procedure 41(b).

14 8. Extensions of time are not favored, though reasonable extensions will be granted. Any
15 motion for an extension of time must be filed no later than ten days prior to the deadline sought to
16 be extended.

17 **IT IS SO ORDERED.**

18
19 Dated: July 3, 2014



VINCE CHHABRIA
United States District Judge