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E-Filed 7/7/14

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TYRONE YOUNGS,
Plaintiff,

v.

SFPD, et al.,
Defendants.

No. C 14-1020 RS (PR)

ORDER OF SERVICE;

**ORDER DIRECTING DEFENDANT
TO FILE DISPOSITIVE MOTION OR
NOTICE REGARDING SUCH
MOTION;**

INSTRUCTIONS TO CLERK

United States District Court
For the Northern District of California

INTRODUCTION

This is a federal civil rights action filed pursuant to 42 U.S.C. § 1983 by a *pro se* state prisoner. In response to the complaint defendant is directed to file a dispositive motion or notice regarding such motion on or before October 15, 2014, unless an extension is granted.

It appears that the claims are unexhausted. Defendant is directed to consider first whether the claims are unexhausted. If defendant so concludes, she may file a motion to dismiss on such grounds, though she is not required to do so.

DISCUSSION

A. Standard of Review

A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009)

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1 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
2 plausibility when the plaintiff pleads factual content that allows the court to draw the
3 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting
4 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal conclusions
5 cast in the form of factual allegations if those conclusions cannot reasonably be drawn from
6 the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994).
7 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
8 that a right secured by the Constitution or laws of the United States was violated, and (2)
9 that the alleged violation was committed by a person acting under the color of state law. *See*
10 *West v. Atkins*, 487 U.S. 42, 48 (1988).

11 **B. Legal Claims**

12 Plaintiff alleges claims against (1) the San Francisco Police Department; (2) a San
13 Bruno County deputy sheriff; and (3) his public defender. Claim 1 is DISMISSED WITH
14 PREJUDICE because, as plaintiff notes, these claims have been raised in a separate action.
15 Claim 3 is DISMISSED (without prejudice) because the claim against his public defender
16 involves different facts and defendants than his claim against the deputy sheriff. *See* Fed. R.
17 Civ. P. 20. If plaintiff wishes to pursue Claim 3, he must file a separate civil rights action.

18 Claim 2 remains. Plaintiff alleges that San Bruno Deputy Sheriff James, a female
19 officer, stated within the hearing of other inmates that plaintiff could not work in the kitchen
20 “because you have HIV.” (Compl. at 3.) Liberally construed, these allegations state a claim
21 for a violation of plaintiff’s constitutionally-protected expectation of privacy in medical
22 matters.

23 **CONCLUSION**

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

- 25 1. The Clerk of the Court shall issue summons and the United States Marshal
26 shall serve, without prepayment of fees, a copy of the complaint in this matter, all
27 attachments thereto, and a copy of this order upon San Bruno Deputy Sheriff James at the
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1 San Bruno County Jail. The Clerk shall also mail courtesy copies of the complaint and this
2 order to the California Attorney General's Office.

3 2. No later than ninety (90) days from the date of this order, defendants shall file a
4 motion for summary judgment or other dispositive motion with respect to the claims in the
5 complaint found to be cognizable above.

6 a. If defendants elect to file a motion to dismiss on the grounds plaintiff
7 failed to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a),
8 defendants shall do so in a motion for summary judgment, as required by *Albino v. Baca*,
9 No. 10-55702, slip op. at 4 (9th Cir. Apr. 3, 2014) (en banc).

10 b. Any motion for summary judgment shall be supported by adequate factual
11 documentation and shall conform in all respects to Rule 56 of the Federal Rules of Civil
12 Procedure. Defendants are advised that summary judgment cannot be granted, nor qualified
13 immunity found, if material facts are in dispute. If any defendant is of the opinion that this
14 case cannot be resolved by summary judgment, he shall so inform the Court prior to the date
15 the summary judgment motion is due.

16 3. Plaintiff's opposition to the dispositive motion shall be filed with the Court and
17 served on defendants no later than forty-five (45) days from the date defendants' motion is
18 filed.

19 4. Defendants shall file a reply brief no later than fifteen (15) days after
20 plaintiff's opposition is filed.

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

23 6. All communications by the plaintiff with the Court must be served on
24 defendants, or defendants' counsel once counsel has been designated, by mailing a true copy
25 of the document to defendants or defendants' counsel.

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

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

6 9. Extensions of time must be filed no later than the deadline sought to be
7 extended and must be accompanied by a showing of good cause.

8 10. A recent decision from the Ninth Circuit requires that pro se prisoner-plaintiffs
9 be given "notice of what is required of them in order to oppose" summary judgment motions
10 at the time of filing of the motions, rather than when the court orders service of process or
11 otherwise before the motions are filed. *Woods v. Carey*, 684 F.3d 934, 939-41 (9th Cir.
12 2012). Defendants shall provide the following notice to plaintiff when they file and serve
13 any motion for summary judgment:

14 The defendants have made a motion for summary judgment by which they seek
15 to have your case dismissed. A motion for summary judgment under Rule 56
of the Federal Rules of Civil Procedure will, if granted, end your case.

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

24 **IT IS SO ORDERED.**

25 DATED: July 7, 2014


RICHARD SEEBORG
United States District Judge