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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANTOINE L. ARDDS,
Plaintiff,

v.

M. PIZANO, et al.,
Defendants.

Case No. [15-cv-00686-JCS](#) (PR)

ORDER OF SERVICE;

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

INSTRUCTIONS TO CLERK

INTRODUCTION

Plaintiff, a California state prisoner proceeding pro se, has filed this federal civil rights action under 42 U.S.C. § 1983 in which he raises claims against prison guards at Salinas Valley State Prison.

The third amended complaint (Dkt. No. 26) states cognizable claims. Therefore, in response to the operative complaint, defendants are directed to file a dispositive motion or notice regarding such motion on or before **August 7, 2017**, unless an extension is granted. The Court further directs that defendants adhere to the notice provisions detailed in Sections 2.a and 10 of the conclusion of this order.

DISCUSSION

A. Standard of Review

In its initial review of this pro se complaint, this Court must dismiss any claim that is frivolous or malicious, or fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C.

1 § 1915(e). Pro se pleadings must be liberally construed. *See Balistreri v. Pacifica Police*
2 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

3 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a
4 claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
5 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
6 plausibility when the plaintiff pleads factual content that allows the court to draw the
7 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting
8 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal
9 conclusions cast in the form of factual allegations if those conclusions cannot reasonably
10 be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55
11 (9th Cir. 1994).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
13 elements: (1) that a right secured by the Constitution or laws of the United States was
14 violated, and (2) that the alleged violation was committed by a person acting under the
15 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

16 **B. Legal Claims**

17 Plaintiff alleges that in October 2014, Salinas Valley prison guard M. Pizano
18 sprayed a dose of pepper spray into plaintiff’s “bag of beans” during a cell search in
19 retaliation for complaining about prison staff conduct. Plaintiff, who did not know of
20 Pizano’s act, later ate the contaminated beans, which resulted in injury to him. When
21 liberally construed, this states cognizable First and Eighth Amendment claims.

22
23 Plaintiff did not see Pizano’s alleged act. He bases his allegations on “information
24 and belief” that two prison porters observed Pizano. Allegations based merely on
25 “information and belief” may be sufficient to state a claim. However, in order for his
26 claim to survive summary judgment, plaintiff will have to obtain evidentiary support for
27 his allegations.

28 Plaintiff also alleges Salinas Valley prison guards J. Lopez, E. Medina, and C.

1 Martella failed to respond to his grievance about M. Pizano. When liberally construed,
2 these allegations state cognizable claims for retaliation and failure to protect.

3 **CONCLUSION**

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

5 1. The Clerk of the Court shall issue summons and a Magistrate Judge
6 jurisdiction consent form and the United States Marshal shall serve these forms, without
7 prepayment of fees, along with a copy of the operative complaint in this matter (Docket
8 No. 26), all attachments thereto, and a copy of this order upon M. Pizano, J. Lopez, E.
9 Medina, and C. Martella at Salinas Valley State Prison. The Clerk shall also mail courtesy
10 copies of the complaint and this order to the California Attorney General's Office.

11 2. On or before **August 7, 2017**, defendants shall file a motion for summary
12 judgment or other dispositive motion with respect to the claims in the complaint found to
13 be cognizable above.

14 a. If defendants elects to file a motion to dismiss on the grounds plaintiff
15 failed to exhaust his available administrative remedies as required by 42 U.S.C.
16 § 1997e(a), defendants shall do so in a motion for summary judgment, as required by
17 *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014).

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

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

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

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

3 6. All communications by the plaintiff with the Court must be served on
4 defendants, or defendants’ counsel once counsel has been designated, by mailing a true
5 copy of the document to defendants or defendants’ counsel.

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

9 8. It is plaintiff’s responsibility to prosecute this case. Plaintiff must keep the
10 Court informed of any change of address and must comply with the Court’s orders in a
11 timely fashion. Failure to do so may result in the dismissal of this action for failure to
12 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

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

15 10. A decision from the Ninth Circuit requires that pro se prisoner-plaintiffs
16 be given “notice of what is required of them in order to oppose” summary judgment
17 motions at the time of filing of the motions, rather than when the court orders service of
18 process or otherwise before the motions are filed. *Woods v. Carey*, 684 F.3d 934, 939–41
19 (9th Cir. 2012). Defendants shall provide the following notice to plaintiff when they file
20 and serve any motion for summary judgment:

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

25 Rule 56 tells you what you must do in order to oppose a motion for
26 summary judgment. Generally, summary judgment must be granted when
27 there is no genuine issue of material fact — that is, if there is no real
28 dispute about any fact that would affect the result of your case, the party
who asked for summary judgment is entitled to judgment as a matter of
law, which will end your case. When a party you are suing makes a motion
for summary judgment that is properly supported by declarations (or other

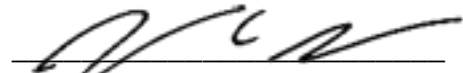
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sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts 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).

IT IS SO ORDERED.

Dated: April 28, 2017



JOSEPH C. SPERO
Chief Magistrate Judge

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Case No. [15-cv-00686-JCS](#)

CERTIFICATE OF SERVICE

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

That on April 28, 2017, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Antoine L. Ardds ID: ID: P-59915
California Health Care Facility, Stockton
P.O. Box 32050
Stockton, CA 95213

Dated: April 28, 2017

Susan Y. Soong
Clerk, United States District Court

By: Karen L. Hom
Karen Hom, Deputy Clerk to the
Honorable JOSEPH C. SPERO