UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

WADE ANTHONY MORMAN,

Plaintiff,

v.

MICHAEL DYER, et al.,

Defendants.

Case No. 16-cv-01523-SI

**ORDER OF SERVICE AND PARTIAL DISMISSAL**

Re: Dkt. No. 7

Wade Anthony Morman, an inmate currently incarcerated at San Quentin State Prison, filed this *pro se* prisoner's civil rights action under 42 U.S.C. § 1983. Pursuant to 28 U.S.C. § 1915A, the court reviewed the complaint, discussed various pleading deficiencies and an apparent statute of limitations problem, and ordered Morman to file an amended complaint. He then filed an amended complaint, which is now before the court for review pursuant to 28 U.S.C. § 1915A.

## BACKGROUND

The amended complaint, like the complaint before it, alleges claims based on events and omissions that occurred in 2011 and early 2012. The facts for the nine claims in the amended complaint are described in the Discussion section later in this order.

Under the prisoner mailbox rule, a complaint is deemed filed as of the date a *pro se* prisoner gives the document to prison officials to mail to the court. *Douglas v. Noelle*, 567 F.3d 1103, 1108-09 (9th Cir. 2009). The complaint has a proof of service stating that Morman gave it to a prison official to mail to the court on March 18, 2016. This action therefore is deemed to have been filed as of March 18, 2016.

## DISCUSSION

A. Legal Standards

A federal court must engage in a preliminary screening of any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *See id*. at § 1915A(b)(1),(2). *Pro se* complaints must be liberally construed. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).

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

B. Statute of Limitations Problems

A statute of limitations sets a time limit for a plaintiff to file a court action for wrongs against him, and typically has no relation to the merits of the claims asserted. Section 1983 does not contain its own limitations period, so the court looks to the limitations period of the forum state's statute of limitations for personal injury torts. *See Elliott v. City of Union City*, 25 F.3d 800, 802 (9th Cir. 1994). California's statute of limitations period for personal injury torts is now two years, and the statute of limitations period for § 1983 claims is two years. *See Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004); Cal. Civ. Proc. Code § 335.1; *Elliott*, 25 F.3d at 802. It is federal law, however, that determines when a cause of action accrues and the statute of limitations begins to run in a § 1983 action. *Wallace v. Kato*, 549 U.S. 384, 388 (2007); *Elliott*, 25 F.3d at 801-02. Under federal law, a claim generally accrues when the plaintiff knows or has reason to know of the injury which is the basis of the action. *See Elliott*, 25 F.3d at 802. The statute of limitations period generally begins when a plaintiff has knowledge of the "critical facts" of his injury, which are "that he has been hurt and who has inflicted the injury." *United States v.*

*Kubrick*, 444 U.S. 111, 122 (1979).

Incarceration of the plaintiff is a disability that may toll the statute for a maximum of two years, but only for a plaintiff who is in prison "for a term less than for life" and is under the disability at the time the cause of action accrues. *See* Cal. Civ. Proc. Code § 352.1. Morman is serving a 118-year prison sentence following his conviction for kidnapping and several sex offenses. Docket No. 7 at 25-26 (citing Cal. Penal Code §§ 209, 261, 286, 288). He thus is entitled to two years of tolling under California Code of Civil Procedure § 352.1.

The limitations period may be subject to equitable tolling. Under California law, equitable tolling "'reliev[es] plaintiff from the bar of a limitations statute when, possessing several legal remedies he, reasonably and in good faith, pursues one designed to lessen the extent of his injuries or damage.'" *Cervantes v. City of San Diego*, 5 F.3d 1273, 1275 (9th Cir. 1993) (quoting *Addison v. California*, 21 Cal. 3d 313, 317 (1978)). Thus, in an appropriate case, the statute of limitations might be tolled for time spent pursuing a remedy in another forum before filing the claim in federal court. The limitations period also may be tolled for the period in which a prisoner exhausted administrative remedies for his inmate appeals pertaining to a claim. *See Brown v. Valoff*, 422 F.3d 926, 942-43 (9th Cir. 2005).

Although the statute of limitations is an affirmative defense that normally may not be raised by the court sua sponte, it may be grounds for sua sponte dismissal of an *in forma pauperis* complaint where the defense is complete and obvious from the face of the pleadings or the court's own records. *See Franklin v. Murphy*, 745 F.2d 1221, 1228-30 (9th Cir. 1984). That is the situation here: the defense appeared complete and obvious from the face of the complaint because this action was filed more than four years after the events and omissions alleged in the complaint occurred. The only events mentioned in the complaint that occurred less than four years before the filing of the complaint were that some of the inmate appeals were decided within that period.

In the order of dismissal with leave to amend, the court discussed the apparent statute of limitations problem, and explained that the defense appeared complete and obvious from the face of the complaint because this action was filed more than four years after the events and omissions alleged in the complaint occurred. *See* Docket No. 5 at 2-4. The court directed Morman to

"explain why his claims based on events and omissions that occurred before March 18, 2012 are not barred by the statute of limitations. . . . Because the limitations period accrues on different dates for incidents that occur on different dates, and the tolling events may be different for each claim, Morman must present his statute of limitations argument on a claim-by-claim basis rather than present a single statute of limitations argument for all his claims." *Id.* at 4.

Morman's amended complaint contains an explanatory note suggesting that all the claims should be lumped together for statute of limitations purposes. *See* Docket No. 7 at 24. He urges that he "began filing grievances between August 2011 and April 2012 and the prison appeal's process was not completed until after May 1, 2012," and therefore he "has four years beyond that May, 2012 to file his complaint." *Id.* (errors in source). The law does not support his view that *any* pending administrative appeal tolls the limitations period for *all* claims. Although the limitations period for a claim may be tolled while the plaintiff-prisoner exhausts administrative remedies, *see Brown*, 422 F.3d at 942-43, it does not follow that the limitations period is tolled for every claim in a complaint as long as the plaintiff is exhausting administrative remedies as to one of those claims.[1] Morman's proposed approach would allow a prisoner to revive a time-barred old claim (by filing administrative appeals about new claims and then filing a complaint containing both the old and new claims), and would allow a prisoner to extend indefinitely the statute of limitations deadline for claims (by serially pursuing administrative remedies for one claim, and then other new claims, and then even other new claims) even though there is no need to

[1] The comments in *Brown* regarding tolling were unnecessary to the holding in that case which decided whether the plaintiff had exhausted administrative remedies before filing his complaint. *Brown* also did not decide whether the tolling for imprisonment and the tolling for the time during which administrative remedies are being exhausted should be tacked on to each other if the two tolling events occurred concurrently. The court will assume for present purposes that the administrative-exhaustion and imprisonment tolling runs consecutively, but defendants are free to argue otherwise later in this action. *See generally Rose v. Petaluma & Santa Rosa Ry. Co.*, 64 Cal. App. 213, 217 (Cal. Ct. App. 1923) ("[I]t is a settled rule of construction that the exemption period cannot be extended by the connection of one disability with another; in other words, a succession of disabilities cannot be tacked upon the first disability so as to prevent the operation of the statute"), *disapproved on other grounds in Harris v. Industrial Acc. Comm. of Cal.*, 204 Cal. 432, 438 (Cal. 1928); *Rafael v. Superior Court*, 1 Cal. App. 3d 457, 459 (Cal. Ct. App. 1969) (limitations period is not tolled by tolling event unless it otherwise would be running, therefore, no extension of limitations period for defendant's absence from state because limitations period had not even started due to plaintiff's minority).

wait for the later claims to be exhausted to file a complaint asserting the first claim. Such results would go far beyond the intent of the rule mentioned in *Brown*, which is to avoid a prisoner being unable to pursue a claim in federal court simply because prison officials delayed in resolving the administrative appeal for that claim. The court concludes that the time during which a prisoner-plaintiff is exhausting administrative remedies for a wrong tolls the limitations period only for the claim covered by that particular inmate appeal. Where there are multiple claims with multiple inmate appeals, the tolling time for each claim will be based on the length of time during which the inmate appeal for that alleged wrong is pending. Just as there can be different accrual dates for different claims, so too can there be different administrative-exhaustion tolling periods for each of those claims.

C. The Claims

Claims 1-3: Morman alleges the following: In "the last week of August, 2011," correctional officer (C/O) Quintero stopped and searched Morman. C/O Quintero gave him a "wedgy" due to Morman's "verbal indication" that this was the third time he had been searched in two weeks. Docket No. 7 at 5. Several other C/Os condoned and encouraged Quintero giving Morman a wedgie. Morman "verbally indicated" that this was unacceptable, leading C/O Heller to tell Morman (using profanity) to retrieve his things and leave. *Id.* at 6. Other correctional staff made sarcastic comments. When Morman continued to scold the correctional officers, C/O Lee rushed up to within about two feet of Morman, took a "stance indicating he was ready to attack," and dared Morman to fight or shut up and leave. *Id.* at 7. On or around August 25th, C/O Lee saw Morman walking and talking to another inmate, and ordered Morman (again using profanity) to shut up and keep walking. *Id.* at 8. Also on or about August 25th, C/O Lee further insulted Morman, rushed to within about two feet of Morman, and took an aggressive stance. C/O Lee told another C/O that Morman was a "J-Cat."[2] *Id.* at 9.

[2] The order of dismissal with leave to amend noted that Morman had not explained why being identified as a "J-Cat" inmate would put him in any danger, and had not alleged that any inmate was made aware of that term. Docket No. 5 at 6. In his amended complaint, Morman once again does not explain the meaning of the term "J-Cat," although he cites to an explanatory note

Claims 1-3 are dismissed without leave to amend because they are barred by the statute of limitations. The events giving rise to the claims occurred in "the last week of August, 2011," or "[o]n or near August 25, 2011," Docket No. 7 at 5, 8, 9. Morman would have known of the critical facts of the alleged injuries to him as the interactions with the correctional staff occurred. The claims accrued as the events occurred, which was more than four years before this action was filed. This action was not filed until March 18, 2016, which was four years, six months and several days after the claims accrued. Allowing tolling for the time during which Morman was exhausting administrative remedies does not make the claims timely. Morman stated in his original complaint that efforts to exhaust claims regarding the August 25, 2011 incident concluded on February 15, 2012. *See* Docket No. 1 at 3, 8; Docket No. 7 at 6-7. When his administrative appeal about the events giving rise to Claims 1-3 was finally denied, nothing stood in the way of Morman filing a § 1983 action asserting Claims 1-3. Assuming that Morman filed an inmate appeal immediately and the appeal was denied on February 15, 2012, and receives tolling for that entire time, Claims 1-3 are barred by the statute of limitations because the action was filed four years, one month and four days after the claim accrued.[3]

The portions of Claims 1-3 asserting that defendants verbally harassed Morman and gave him a wedgie are dismissed for the additional reason that those actions by defendants do not rise to the level of a constitutional violation, as explained in the order of dismissal with leave to amend.

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that states he is a convicted sex offender. *See* Docket No. 7 at 9, 25.

Cases available in Westlaw suggest the term "J-Cat" is prisonspeak for an unintelligent person, *see Travis v. Davey*, 2015 WL 7753351, *2 n.3 (N.D. Cal. 2015), a mentally disturbed person, *see Williams v. Anderson*, 2015 WL 1044629, *8 (E.D. Cal. 2015), or a mentally ill prisoner who takes psychotropic medications, *see People v. Gonzalez*, 2010 WL 4214242, *7 (Cal. Ct. App. 2010). *See also Estate of Ford v. Ramirez-Palmer*, 301 F.3d 1043, 1046 (9th Cir. 2002) ("The broadest classification for inmates receiving psychiatric care [at CMF-Vacaville] was 'J.' Category 'J' inmates were considered sufficiently mentally ill that they could not be housed in the general population, but were generally medication-complaint.")

[3] Claims 1-3 are the only claims as to which the statute of limitations problem is complete and obvious from the face of the pleadings, so only those claims will be dismissed at the initial review stage on the ground that they are barred by the statute of limitations. Statute of limitations problems may exist for the other claims, but the bar for those claims is not complete and obvious from the face of the pleadings and therefore is not discussed in this order.

Claim 4: On or near September 2, 2011, C/O Lee allegedly saw Morman walking and talking to another inmate, and told Morman "that he was staring at plaintiff because plaintiff was ugly." Docket No. 7 at 10. Morman contends that this was done in retaliation for Morman's earlier complaints about the wedgie incident.

Insofar as the claim is one for verbal harassment, Morman fails to state a claim upon which relief may be granted. The insulting comment did not rise to the level of a constitutional violation. As the Ninth Circuit has explained, "'the exchange of verbal insults between inmates and guards is a constant, daily ritual observed in this nation's prisons' of which 'we do not approve,' but which do not violate the Eighth Amendment." *Watison v. Carter*, 668 F.3d 1108, 1113 (9th Cir. 2012) (quoting *Somers v. Thurman*, 109 F.3d 614, 622 (9th Cir.1997) (internal quotation marks omitted).)

A claim for retaliation also is not stated. "Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal." *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote omitted). The allegedly adverse action -- staring at and telling the inmate he was ugly -- was so insignificant that it "cannot reasonably be expected to deter protected speech." *Coszalter v. City of Salem*, 320 F.3d 968, 976 (9th Cir. 2003). Minor acts such as "bad mouthing" and verbal threats usually cannot reasonably be expected to deter protected speech and therefore do not violate a plaintiff's First Amendment rights. *See id.* at 975-76 (discussing *Nunez v. City of Los Angeles*, 147 F.3d 867, 875 (9th Cir. 1998)). Claim 4 is dismissed without leave to amend because it fails to state a claim upon which relief may be granted.

Claim 5: Morman alleges that he went to the medical facility with a written pass on or about September 3, 2011, and gave it to C/O Ponce, who later returned the pass to Morman with "J-Cat " written on the pass. This allegedly upset plaintiff and was retaliatory. Morman alleges that C/O Ponce's act was in response to "verbal expressions as stated at claims 1 and 2, plaintiff's California Penal Code § 290 convictions, and any other information included as a part of

plaintiff's prison record." Docket No. 7 at 10-11.

The claim is dismissed for failure to state a claim upon which relief is granted. Morman has not explained the meaning of "J-Cat," has not shown that the notation put him in any danger, and has not alleged that C/O Ponce showed the notation to anyone to create a danger to Morman. *See* footnote 2. Insofar as the notation insulted Morman, the insult does not rise to the level of a constitutional violation. *See Watison*, 668 F.3d at 1113. Similarly, a retaliation claim is not stated because the notation was so insignificant that it "cannot reasonably be expected to deter protected speech." *Coszalter*, 320 F.3d at 976.

Claim 6: Morman alleges that on or about September 14, 2011, C/O Heller singled him out for a search and said to his co-workers, "we're harassing him!" Docket No. 7 at 11. C/O Lee laughed and searched Morman's property. During the search, Lee read Morman's legal property which included written grievances, took some personal property, and damaged some other personal property. *Id.* at 11-12. C/O Taylor encouraged C/O LaVelle to confiscate art pastels, and verbally insulted Morman. *Id.* at 12. C/O LaVelle confiscated the art pastels. *Id.* at 13. Morman alleges that the defendants' actions were taken because of, among other things, Morman's August 2011 complaints about the searches and correctional officers.

Liberally construed, the amended complaint states a cognizable retaliation claim against C/Os Heller, Lee, Taylor and LaVelle, who allegedly did the search for retaliatory purposes. *See Rhodes*, 408 F. 3d. at 567-68.

Allegations that a plaintiff has been deprived of his property negligently or intentionally without a pre-deprivation hearing do not state a due process claim under § 1983 if the deprivation was random and unauthorized, *see Parratt v. Taylor*, 451 U.S. 527, 535-44 (1981) (state employee negligently lost prisoner's hobby kit), *overruled in part on other grounds, Daniels v. Williams*, 474 U.S. 327, 330-31 (1986); *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (intentional destruction of inmate's property), because California provides an adequate state post-deprivation remedy, *see Zinermon v. Burch*, 494 U.S. 113, 128-29 (1990) (where state cannot foresee and therefore provide meaningful hearing prior to deprivation, statutory provision for post-deprivation hearing or

common law tort remedy for erroneous deprivation satisfies due process). The amended complaint's allegations that C/Os damaged and destroyed Morman's personal property shows a random and unauthorized property deprivation that is not actionable under § 1983.

A state law claim might exist for deprivation and/or destruction of property, but there are many impediments to such a claim: Morman has not invoked the court's supplemental jurisdiction; has not alleged compliance with the claims-presentation requirements; and a state law claim appears to be time-barred. If Morman wants to pursue a state law claim about the damage and destruction of his property, he must promptly file an amendment to his amended complaint in which he alleges his state law claim(s), alleges that the court has supplemental jurisdiction over such state law claim(s), and links one or more defendants to the claim(s). More importantly, he must allege timely compliance with the California Tort Claims Act.

The California Tort Claims Act, *see* Cal. Gov't Code §§ 810, et seq. -- commonly referred to as the California Government Claims Act by the courts, *see City of Stockton v. Sup. Ct.*, 42 Cal. 4th 730, 741-42 (Cal. 2007) -- requires a person to present his claim to the California Victim Compensation and Government Claims Board ("Board") before he may file an action for damages against a California governmental entity or employee "for death or for injury to person or to personal property." Cal. Gov't Code § 911.2; *see* Cal. Gov't Code §§ 905.2, 911.2, 945.4, 950.2.

The Government Claims Act has strict time limits for filing such a claim with the Board *and* for filing an action in court after the rejection of such a claim. A claimant must present his claim to the Board within six months of the accrual of the cause of action. *See* Cal. Gov't Code § 911.2. Additionally, an action against a governmental entity or employee covered by the claims-presentation requirement must be filed within six months following written notice of rejection of the claim by the Board. *See* Cal. Gov't Code § 945.6(a)(1). The timeliness of actions as to which the claims-presentation requirement applies "is governed by the specific statute of limitations set forth in the Government Code, not the statute of limitations applicable to private defendants."

*County of Los Angeles v. Sup. Ct.*, 127 Cal. App. 4th 1263, 1267 (Cal. Ct. App. 2005). The tolling provisions for prisoners, minors, and mentally incapacitated persons that exist for statutes of limitations applicable to private defendants do not apply to the deadlines for claims covered by the California Government Claims Act. *See, e.g.*, Cal. Civ. Proc. Code §§ 352(b), 352.1(b).

Claim 7: Morman alleges that he was subjected to a search on September 28, 2011 by C/O LaVelle in the "guise of random search which resulted as a means of subjecting plaintiff to below-stated conduct of defendants F. Lee and Michael Dyer who through intimidation and force, subjected plaintiff to have a hearing regarding plaintiff's written grievances." Docket No. 7 at 13-14. Sergeant Dyer and other defendants intimidated and tricked Morman to go to a hearing about his grievances, put him in a holding cell in tight handcuffs for about thirty minutes. *Id.* at 14-17.

Although this claim is far from a model of clarity, the court understands the gist of the claim to be that the correctional officers retaliated against Morman for his earlier complaints about the searches and correctional officers' treatment of him by intimidating him and otherwise trying to adversely influence him in the pursuit of his administrative grievances. Liberally construed, Claim 7 states a cognizable claim against defendants LaVelle, Lee, and Dyer for retaliation.

Claim 8: On or about October 6, 2011, captain Padillia allegedly mishandled Morman's inmate appeal and made negative statements during interviews of Morman and his witnesses. Docket No. 7 at 18. There is no federal constitutional right to a prison administrative appeal or grievance system for California inmates. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003). Prison officials are not liable for a due process violation for simply failing to process an appeal properly, denying an inmate appeal or granting an inmate appeal. A claim under § 1983 for a due process violation is not stated against any defendant for a denial of plaintiff's inmate appeals. Claim 8 is dismissed without leave to amend.

Claim 9: Morman alleges that he was wrongly placed in administrative segregation on or about December 1, 2011. Docket No. 7 at 19. Lieutenant K. Evans and sergeant D. Kilmer

allegedly caused him to be put in administrative segregation without proper notice or hearing. *Id.*

When prison officials initially determine whether a prisoner is to be segregated for administrative reasons, due process requires that prison officials hold an informal nonadversary hearing within a reasonable time after the prisoner is segregated, inform the prisoner of the charges against him or the reasons segregation is being considered, and allow the prisoner to present his views. *Toussaint v. McCarthy*, 801 F.2d 1080, 1100 (9th Cir. 1986), *abrogated in part on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995). Due process also requires that there be some evidence to support the prison officials' decision. *Superintendent v. Hill*, 472 U.S. 445, 455 (1985); *Toussaint*, 801 F.2d at 1104-05. Liberally construed, the amended complaint states a cognizable claim against lieutenant Evans and sergeant Kilmer for violating Morman's due process rights to notice, a hearing, and a decision supported by sufficient evidence.

Morman also alleges in Claim 9 that inmate appeals coordinators Tate and Boerum wrongly denied his administrative appeals regarding his placement in administrative segregation. The claim against these two defendants is dismissed because prison officials are not liable for allegedly improper handling of, or failure to grant, an inmate appeal. *Ramirez*, 334 F.3d at 860.

Morman further alleges in Claim 9 that the misconduct of the C/Os and sergeant described in the earlier claims (including the searches and harassment of Morman) caused him wrongly to be placed in administrative segregation. Although his placement in administrative segregation flowed from the events described earlier in his amended complaint, he does not actually allege that these members of the custody staff (i.e., C/Os Quintero, Heller, Lee, Ponce, Taylor and LaVelle and sergeant Dyer) made the decision to place him in administrative segregation. A due process claim is not stated against these seven members of the custody staff.

Finally, Morman uses the word "enjoin" repeatedly in the amended complaint. The word has several different meanings and Morman uses the word in several different contexts that seem to mean different things. Examples in the amended complaint include the allegations that Morman "suffered defendant Quintero's enjoining, encouraging, and approval of conduct by" other defendants, Docket No. 7 at 6; as a result of Ponce writing "J-Cat" on a medical pass, Morman "suffered defendant Ponce's enjoining [other defendants'] ongoing pains in the mind, failure to let

plaintiff alone, and retaliatory conduct," *id.* at 10; Morman "suffered defendant Lee's continued personal efforts, in addition to the ongoing enjoinig [sic] efforts by defendants," Docket No. 7 at 12; and Morman "suffered defendant G. Taylor's enjoining with defendants" to harm him, *id.* Due to the different usages of the word "enjoin" (which itself has different definitions), the reader must guess as to the meaning of some of phrases in the amended complaint. For future filings, Morman is strongly encouraged to either stop using the word "enjoin" or to define the term each time he uses it.

## CONCLUSION

1. Liberally construed, Claim 6 of the amended complaint states a cognizable retaliation claim against C/Os Heller, Lee, Taylor and LaVelle; Claim 7 states a cognizable retaliation claim against C/Os LaVelle, and Lee, and sergeant Dyer.; and Claim 9 states a cognizable claim against lieutenant Evans and sergeant Kilmer for a due process violation. All other claims and defendants are dismissed.

2. The clerk shall issue a summons and the United States Marshal shall serve, without prepayment of fees, the summons, and a copy of the amended complaint upon the following defendants:

- correctional sergeant Michael Dyer (at CTF-Soledad)
- correctional officer E. Heller (at CTF-Soledad)
- correctional officer F. Lee (at CTF-Soledad)
- correctional officer G. Taylor (at CTF-Soledad)
- correctional officer G. LaVelle (at CTF-Soledad)
- correctional captain K. Evans (at San Quentin State Prison)
- correctional sergeant D. Kilmer (at San Quentin State Prison)

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

a. No later than **June 16, 2017**, defendants must file and serve a motion for summary judgment or other dispositive motion. If defendants are of the opinion that this case cannot be resolved by summary judgment, defendants must so inform the court prior to the date the motion is due. If defendants file a motion for summary judgment, defendants must provide to plaintiff a new *Rand* notice regarding summary judgment procedures at the time they file such a

motion. *See Woods v. Carey*, 684 F.3d 934, 939 (9th Cir. 2012).

b. Plaintiff's opposition to the summary judgment or other dispositive motion must be filed with the court and served upon defendants no later than **July 14, 2017**. Plaintiff must bear in mind the notice and warning regarding summary judgment provided later in this order as he prepares his opposition to any motion for summary judgment.

c. If defendants wish to file a reply brief, the reply brief must be filed and served no later than **July 28, 2017**.

4. Plaintiff is provided the following notices and warnings about the procedures for motions for summary judgment:

> The defendants may make a motion for summary judgment by which they seek 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. . . . Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact -- that is, if there is no real 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 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).

If a defendant files a motion for summary judgment for failure to exhaust administrative remedies, he is seeking to have the case dismissed. As with other defense summary judgment motions, if a motion for summary judgment for failure to exhaust administrative remedies is granted, the plaintiff's case will be dismissed and there will be no trial.

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 defendant, but once a defendant is represented by counsel, all documents must be mailed to counsel rather

than directly to that defendant.

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

7. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the court informed of any change of address and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of address in every pending case every time he is moved to a new facility.

8. Plaintiff is cautioned that he must include the case name and case number for this case on any document he submits to this court for consideration in this case.

**IT IS SO ORDERED**.

Dated: April 4, 2017

SUSAN ILLSTON
United States District Judge

United States District Court
Northern District of California