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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FREDERICK WILSON, JR.,
Plaintiff,
v.
WILLIAM L. MUNIZ,
Defendant.

Case No. [16-cv-03366-JSC](#)

**ORDER DIRECTING PLAINTIFF
TO FILE NOTICE OF ELECTION**

INTRODUCTION

Plaintiff, a prisoner at Salinas Valley State Prison (“SVSP”), filed this pro se civil action against the SVSP Warden, William L. Muniz.¹ For the reasons explained below, the complaint is ordered served upon Defendant.

PROCEDURAL HISTORY

Plaintiff first filed his claims on a federal habeas petition form in the United States District Court for the Eastern District of California. The Eastern District transferred the case to the Central District of California, where Plaintiff was directed to clarify the nature of the action he sought to bring because the pleadings were confusing. (ECF No. 6.) Plaintiff acknowledged that he incorrectly used the federal habeas form to present his claim because he was sent that form by the Eastern District. (ECF No. 7 at 2; ECF No. 8 at 2.) The Honorable Dale S. Fischer of the Central

¹ Plaintiff consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (ECF No. 14.)

1 District of California found that Plaintiff wished to pursue a civil action --- not a habeas petition --
2 - because the gravamen of Plaintiff’s claim is that prison authorities are collecting on a debt
3 illegally under the Fair Debt Collection Practices Act and he is not challenging his conviction or
4 confinement. (ECF No. 8.) The case was transferred back to the Eastern District of California,
5 which then transferred the case to this court because SVSP, where Defendant is located and the
6 actions giving rise to Plaintiff’s claims took place, is located in this District. (ECF Nos. 8, 11.)

7 **STANDARD OF REVIEW**

8 Federal courts must engage in a preliminary screening of cases in which prisoners seek
9 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. §
10 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of
11 the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief
12 may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.*
13 § 1915A(b). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901
14 F.2d 696, 699 (9th Cir. 1990).

15 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the
16 claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the
17 statement need only give the defendant fair notice of what the . . . claim is and the grounds upon
18 which it rests.” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although to
19 state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to
20 provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a
21 formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must
22 be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*,
23 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer “enough facts to
24 state a claim for relief that is plausible on its face.” *Id.* at 1974.

25 **LEGAL CLAIMS**

26 When liberally construed, Plaintiff’s allegations state a cognizable claim that Defendant
27 William Muniz violated the Fair Debt Collection Practices Act (15 U.S.C. §§ 1692-1692p) by
28 causing prison officials to collect on a debt improperly and without “validation.” However, before

1 construing a pro se habeas petition as a civil complaint, a district court must advise the prisoner of
2 the consequences of construing a habeas petition as a civil complaint and provide an opportunity
3 to withdraw or amend the complaint. *Nettles v. Grounds*, 830 F.3d 922, 936 (9th Cir. 2016) (en
4 banc). Plaintiff was not warned by the Central or Eastern Districts about the consequences of
5 proceeding with his claims in a civil action instead of a habeas petition. (See ECF Nos. 6, 8, 11.)
6 Consequently, before this Court allows Plaintiff to proceed with this case as a civil action, Plaintiff
7 is warned that doing so will subject him to the “three strikes,” exhaustion, and in forma pauperis
8 provisions of the Prison Litigation Reform Act. These provisions are set forth here:

9 (1) 28 U.S.C. § 1915(g) provides that a prisoner may not bring a civil action or appeal a
10 judgment in a civil action or proceeding under 28 U.S.C. § 1915 (i.e., may not proceed in forma
11 pauperis) "if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any
12 facility, brought an action or appeal in a court of the United States that was dismissed on the
13 grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted,
14 unless the prisoner is under imminent danger of serious physical injury;"

15 (2) 42 U.S.C. § 1997e provides that “[n]o action shall be brought with respect to prison
16 conditions under [] Federal law, by a prisoner confined in any jail, prison, or other correctional
17 facility until such administrative remedies as are available are exhausted;”

18 (3) even though Plaintiff is proceeding in forma pauperis, under 28 U.S.C. § 1915(b)(1) he
19 will be required to pay the full amount of the filing fee of \$350.00 by way of an "installment plan"
20 that operates as follows: (1) first, the court will assess and collect a partial filing fee from the
21 prisoner;⁷ (2) after payment of the initial partial filing fee, the prisoner will be required to make
22 monthly payments of 20% of the preceding month's income credited to the prisoner's account.

CONCLUSION

23 Within **28 days** of the date this order is filed, Plaintiff shall file a notice with the Court
24 indicating whether he elects to: (1) proceed with this action as a civil action notwithstanding the
25 foregoing consequences of doing so; (2) voluntarily dismiss this action; or (3) amend the petition
26 to state a claim that is cognizable in a federal habeas petition. If Plaintiff does not file such a
27 notice, this case will be dismissed without prejudice to Plaintiff bringing his claims in a civil


28 ⁷The amount of the partial filing fee is equal to 20% of the greater of (a) the average monthly
deposits to the prisoner's account for the last six months, or (b) the average monthly balance in the
prisoner's account for the last six months. See *id.* § 1915(b)(1).

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action at a future date.

IT IS SO ORDERED.

Dated: November 23, 2016


JACQUELINE SCOTT CORLEY
United States Magistrate Judge

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CERTIFICATE OF SERVICE

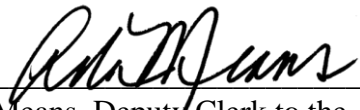
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 23, 2016, 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.

Frederick Wilson, Jr. ID: Prisoner Id F-29297
High Desert State Prison
P.O. Box 3030
Susanville, CA 96127-3030

Dated: November 23, 2016

Susan Y. Soong
Clerk, United States District Court

By: 
Ada Means, Deputy Clerk to the
Honorable JACQUELINE SCOTT CORLEY