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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GEORGE ELLIS WALLACE,
Plaintiff,
v.
C. E. DUCART,
Defendant.

Case No. [16-cv-03798-JSC](#)

ORDER OF SERVICE

INTRODUCTION

Plaintiff, a California prisoner, filed this pro se civil rights complaint under 42 U.S.C. § 1983 against officials at Pelican Bay State Prison.¹ Plaintiff’s application to proceed *in forma pauperis* is granted in a separate order. For the reasons explained below, the complaint is ordered served upon Defendant Ducart.

STANDARD OF REVIEW

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

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the

¹ Plaintiff consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (ECF No. 1 at 4.)

1 statement need only give the defendant fair notice of what the . . . claim is and the grounds upon
2 which it rests.” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although to
3 state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to
4 provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a
5 formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must
6 be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*,
7 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer “enough facts to
8 state a claim for relief that is plausible on its face.” *Id.* at 1974.

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

13 LEGAL CLAIMS

14 Plaintiff alleges that prison officials at PBSP fired him from his job, verbally harassed him,
15 moved him to a different part of the prison, and threatened to harm him based upon his religious
16 beliefs. Such allegations, when liberally construed, state a cognizable claim for the violation of
17 his First Amendment right to freely exercise his religious beliefs.

18 Plaintiff names C.E. Ducart, the PBSP Warden, as a Defendant, and he indicates that he
19 needs additional time to obtain the names of the other prison officials responsible for these
20 actions. When he obtains their names, he may include them in an amended complaint. The
21 amended complaint must include the caption and civil case number used in this order (No. C 16-
22 3798 JSC (PR)) and the words “COURT-ORDERED FIRST AMENDED COMPLAINT” on the
23 first page. As the amended complaint will completely replace the original complaint, *see Ferdik v.*
24 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992), Plaintiff must include all claims and Defendants ---
25 including those from the original complaint --- in the amended complaint, and he may not
26 incorporate material from the original complaint by reference.

27 Plaintiff names Governor Brown as a Defendant, but makes no allegations against him. He
28 is not liable simply because he is a superior of prison officials who allegedly violated Plaintiff’s

1 rights. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (under no circumstances is there
2 respondeat superior liability under Section 1983). Accordingly, the complaint is dismissed as to
3 Defendant Brown.

4 **CONCLUSION**

5 1. The claims against Defendant Edmund G. Brown are **DISMISSED**.

6 2. The Clerk shall issue a summons and Magistrate Judge jurisdiction consent form
7 and the United States Marshal shall serve, without prepayment of fees, the summons, Magistrate
8 Judge jurisdiction consent form, a copy of the complaint with attachments, and a copy of this
9 order on **Warden C. E. Ducart** at the **Pelican Bay State Prison**.

10 The Clerk shall also mail a courtesy copy of the Magistrate Judge jurisdiction consent
11 form, the complaint with all attachments and a copy of this order to the California Attorney
12 General's Office.

13 3. Defendant shall complete and file the Magistrate Judge jurisdiction consent form
14 within the deadline provided on the form. He shall also file an answer in accordance with the
15 Federal Rules of Civil Procedure.

16 43. To expedite the resolution of this case:

17 a. No later than **91** days from the date this order is issued, Defendant shall file a
18 motion for summary judgment or other dispositive motion. The motion shall be supported by
19 adequate factual documentation and shall conform in all respects to Federal Rule of Civil
20 Procedure 56, and shall include as exhibits all records and incident reports stemming from the
21 events at issue. If Defendant is of the opinion that this case cannot be resolved by summary
22 judgment, he shall so inform the Court prior to the date the summary judgment motion is due. All
23 papers filed with the Court shall be promptly served on Plaintiff.

24 b. At the time the dispositive motion is served, Defendants shall also serve, on a
25 separate paper, the appropriate notice required by *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th
26 Cir. 1998) (en banc). *See Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012).

27 c. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the
28 Court and served upon Defendant no later than **28 days** from the date the motion is filed. Plaintiff

1 must read the attached page headed "NOTICE -- WARNING," which is provided to him pursuant
2 to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc).

3 d. Defendant shall file a reply brief no later than **14** days after the opposition is
4 filed.

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

7 5. All communications by Plaintiff with the Court must be served on Defendant or
8 their counsel once counsel has been designated, by mailing a true copy of the document to
9 Defendant or his counsel.

10 6. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
11 No further Court order under Federal Rule of Civil Procedure 30(a)(2) is required before the
12 parties may conduct discovery.

13 7. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
14 informed of any change of address by filing a separate paper with the clerk headed "Notice of
15 Change of Address." He also must comply with the Court's orders in a timely fashion. Failure to
16 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of
17 Civil Procedure 41(b). Reasonable requests for an extension of a deadline will be allowed upon a
18 showing of good cause if the request is filed prior to the deadline.

19 **IT IS SO ORDERED.**

20 Dated: October 31, 2016

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22 JACQUELINE SCOTT CORLEY
23 United States Magistrate Judge
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NOTICE -- WARNING (SUMMARY JUDGMENT)

If Defendants move for summary judgment, they are seeking 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 Defendant's 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.

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GEORGE ELLIS WALLACE,
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C. E. DUCART,
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Case No. [16-cv-03798-JSC](#)

CERTIFICATE OF SERVICE

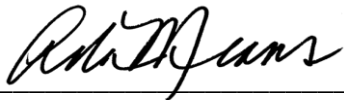
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 31, 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.

George Ellis Wallace ID: Prisoner Id AF8343
Pelican Bay State Prison
P.O. Box 7500
Crescent City, CA 95532

Dated: October 31, 2016

Susan Y. Soong
Clerk, United States District Court

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