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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GREGORIO A. MALDONADO,
Plaintiff,
v.
WILLIAMS, et al.,
Defendants.

Case No. [16-cv-04406-SI](#)

ORDER OF SERVICE

Re: Dkt. No. 1

Gregorio Maldonado, currently incarcerated at Corcoran State Prison, filed this *pro se* civil rights action under 42 U.S.C. § 1983 to complain about conditions of confinement at San Quentin State Prison, where he earlier was housed. His complaint is now before the court for review under 28 U.S.C. § 1915A.

BACKGROUND

The complaint alleges the following:

On or about January 30, 2013, Maldonado arrived at San Quentin State Prison, and was housed together in the same unit with inmate Rodriguez. On or about February 7, 2013, correctional officer (C/O) Williams instructed Maldonado to move away from Rodriguez for security reasons.

Inmate Rodriguez was later moved by C/O Williams to another section in the same prison unit. Being moved infuriated inmate Rodriguez, “a ZETA prison gang member.” Docket No. 1 at 3. On or about April 16, 2013, inmate Rodriguez paid \$50.00 to be re-housed in 4-W-24 housing unit, and was moved back into the cell where Maldonado was housed. Rodriguez said it was his cell, and immediately threatened Maldonado with a shank and told him to move.

1 On April 18, 2013, Maldonado told C/O Lee about inmate Rodriguez's threats and that
2 Rodriguez was using drugs heavily. C/O Lee ignored Maldonado's plea for help.

3 On May 9, 2013, inmate Ramos "also [a] ZETA gang member," approached and offered to
4 let Maldonado move into his cell. Maldonado moved in, whereupon inmate Ramos robbed him of
5 almost \$100 worth of canteen items and threatened to kill him. *Id.* at 4.

6 On or about May 17, 2013, Maldonado informed C/O Williams of the death threats by the
7 ZETA prison gang, particularly inmate Ramos. C/O Williams ignored Maldonado's warning that
8 his life was in danger and failed to provide him with protective custody.

9 On or about May 21, 2013, inmate Ramos again threatened to kill Maldonado. Maldonado
10 informed C/O Cano that his life was in danger from the ZETA prison gang. C/O Cano failed to
11 provide him with protective custody.

12 On or about May 21, 2013, inmate Ramos assaulted Maldonado with a shank in the cell.
13 Inmate Rodriguez was present at the time of the assault. Maldonado was injured.

14
15 **DISCUSSION**

16 A federal court must engage in a preliminary screening of any case in which a prisoner
17 seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28
18 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any
19 claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or
20 seek monetary relief from a defendant who is immune from such relief. *See id.* at §
21 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica Police*
22 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

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

27 The Eighth Amendment's prohibition of cruel and unusual punishment requires that prison
28 officials take reasonable measures for the safety of inmates. *See Farmer v. Brennan*, 511 U.S.

1 825, 834 (1994). In particular, officials have a duty to protect inmates from violence at the hands
2 of other inmates. *See id.* at 833. A prison official violates the Eighth Amendment only when two
3 requirements are met: (1) the deprivation alleged is, objectively, sufficiently serious, and (2) the
4 official is, subjectively, deliberately indifferent to the inmate's safety. *See id.* at 834. To be liable
5 in a failure to prevent harm situation, the official must know of and disregard an excessive risk to
6 inmate safety. *See id.* at 837.

7 Liberally construed, the *pro se* complaint states a cognizable claim against C/O Williams,
8 C/O Lee, and C/O Cano for deliberate indifference to Maldonado's safety. The complaint alleges
9 that Maldonado alerted each of these defendants to a danger to his safety, and that each of them
10 failed and refused to take actions to protect him.

11
12 **CONCLUSION**

13 1. Liberally construed, the complaint states a cognizable § 1983 claim against C/O
14 Williams, C/O Lee, and C/O Cano for violating Maldonado's rights under the Eighth Amendment.
15 All other claims and defendants are dismissed.

16 2. The clerk shall issue a summons and the United States Marshal shall serve, without
17 prepayment of fees, the summons, and a copy of the complaint, and a copy of this order upon the
18 following three defendants, all of whom apparently work at San Quentin State Prison:

- 19 - C/O Williams
20 - C/O Lee
21 - C/O Cano

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

23 a. No later than **March 10, 2017**, defendants must file and serve a motion for
24 summary judgment or other dispositive motion. If defendants are of the opinion that this case
25 cannot be resolved by summary judgment, defendants must so inform the court prior to the date
26 the motion is due. If defendants file a motion for summary judgment, defendants must provide to
27 plaintiff a new *Rand* notice regarding summary judgment procedures at the time they file such a
28

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

2 b. Plaintiff's opposition to the summary judgment or other dispositive motion
3 must be filed with the court and served upon defendants no later than **April 7, 2017**. Plaintiff
4 must bear in mind the notice and warning regarding summary judgment provided later in this
5 order as he prepares his opposition to any motion for summary judgment.

6 c. If defendants wish to file a reply brief, the reply brief must be filed and
7 served no later than **April 21, 2017**.

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

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

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

30 5. All communications by plaintiff with the court must be served on a defendant's
31 counsel by mailing a true copy of the document to defendant's counsel. The court may disregard
32 any document which a party files but fails to send a copy of to his opponent. Until a defendant's
33 counsel has been designated, plaintiff may mail a true copy of the document directly to defendant,
34 but once a defendant is represented by counsel, all documents must be mailed to counsel rather

1 than directly to that defendant.

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

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

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

12 **IT IS SO ORDERED.**

13 Dated: December 19, 2016



SUSAN ILLSTON
United States District Judge

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