

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ROBERT M. COATS,  
Plaintiff,  
  
v.  
  
J. DE ANZO, et al.,  
Defendants.

Case No. [16-cv-05872-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, filed this federal civil rights action under 42 U.S.C. § 1983 in which he alleges that prison guards at Salinas Valley State Prison violated his Eighth Amendment rights when they used excessive force on him.

The first amended complaint states cognizable Eighth Amendment claims. Therefore, in response to the operative complaint (Dkt. No. 9), defendants are directed to file a dispositive motion or notice regarding such motion on or before **August 7, 2017**. 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 **B. Legal Claims**

13 Plaintiff alleges that Salinas Valley State Prison correctional officers J. De Anzo  
14 and M. Hernandez used excessive force against him in May 19, 2015. When liberally  
15 construed, plaintiff has stated cognizable claims under the Eighth Amendment.

16 **CONCLUSION**

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

18 1. The Clerk of the Court shall issue summons and a Magistrate Judge  
19 jurisdiction consent form and the United States Marshal shall serve these forms, without  
20 prepayment of fees, along with a copy of the operative complaint in this matter (Dkt. No.  
21 9), all attachments thereto, and a copy of this order upon J. De Anzo and M. Hernandez,  
22 both prison guards at Salinas Valley State Prison. The Clerk shall also mail courtesy  
23 copies of the operative complaint and this order to the California Attorney General’s  
24 Office.

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

28

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

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

11           3.       Plaintiff’s opposition to the dispositive motion shall be filed with the Court  
12 and served on defendants no later than forty-five (45) days from the date defendants’  
13 motion is filed.

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

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

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

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

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

28

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

3           10.       A decision from the Ninth Circuit requires that pro se prisoner-plaintiffs  
4 be given “notice of what is required of them in order to oppose” summary judgment  
5 motions at the time of filing of the motions, rather than when the court orders service of  
6 process or otherwise before the motions are filed. *Woods v. Carey*, 684 F.3d 934, 939–41  
7 (9th Cir. 2012). Defendants shall provide the following notice to plaintiff when they file  
8 and serve any motion for summary judgment:

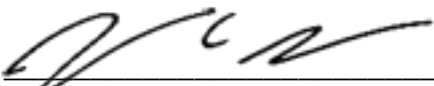
9           The defendants have made a motion for summary judgment by which they  
10 seek to have your case dismissed. A motion for summary judgment under  
11 Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your  
12 case.

13           Rule 56 tells you what you must do in order to oppose a motion for  
14 summary judgment. Generally, summary judgment must be granted when  
15 there is no genuine issue of material fact — that is, if there is no real  
16 dispute about any fact that would affect the result of your case, the party  
17 who asked for summary judgment is entitled to judgment as a matter of  
18 law, which will end your case. When a party you are suing makes a motion  
19 for summary judgment that is properly supported by declarations (or other  
20 sworn testimony), you cannot simply rely on what your complaint says.  
21 Instead, you must set out specific facts in declarations, depositions, answers  
22 to interrogatories, or authenticated documents, as provided in Rule 56(e),  
23 that contradict the facts shown in the defendants’ declarations and  
24 documents and show that there is a genuine issue of material fact for trial.  
25 If you do not submit your own evidence in opposition, summary judgment,  
26 if appropriate, may be entered against you. If summary judgment is  
27 granted, your case will be dismissed and there will be no trial.

28 *Rand v. Rowland*, 154 F.3d 952, 962-963 (9th Cir. 1998).

**IT IS SO ORDERED.**

**Dated:** April 28, 2017

  
\_\_\_\_\_  
JOSEPH C. SPERO  
Chief Magistrate Judge

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ROBERT M. COATS,  
Plaintiff,

v.

J. DE ANZO, et al.,  
Defendants.

Case No. [16-cv-05872-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.

Robert M. Coats ID: D-81314  
Salinas Valley State Prison  
P.O. Box 1050  
Soledad, CA 93960

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