

1
2
3
4
5
6
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 San Francisco Division

11 MICHAEL J. HORTON,
12 Plaintiff,
13
14 v.
15 C.E. DUCART, et al.,
16 Defendants.

17 Case No. [16-cv-06411-LB](#)

18
19 **ORDER OF SERVICE**
20 [Re: ECF No. 9]

21
22 **INTRODUCTION**
23

24 Michael J. Horton, an inmate currently housed at the California State Prison - Sacramento,
25 filed this *pro se* prisoner's civil rights action under 42 U.S.C. § 1983. He consented to proceed
26 before a magistrate judge. (ECF No. 6.)¹ Upon initial review, the court dismissed the complaint
27 with leave to amend. Mr. Horton then filed an amended complaint, which is now before the court
28 for review. This order finds that the amended complaint states cognizable claims and orders
service of process on the defendants.

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
990
991
992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189
1190
1191
1192
1193
1194
1195
1196
1197
1198
1199
1190
1191
1192
1193
1194
1195
1196
1197
1198
1199
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1290
1291
1292
1293
1294
1295
1296
1297
1298
1299
1290
1291
1292
1293
1294
1295
1296
1297
1298
1299
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1320
1321
1322
1323
1324
1325
1326
1327
1328
1329
1320
1321
1322
1323
1324
1325
1326
1327
1328
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1390
1391
1392
1393
1394
1395
1396
1397
1398

STATEMENT

Mr. Horton complains about prison officials' refusal to remove an "R" suffix that was placed in his records.² He alleges the following in his amended complaint:

On or about October 12, 2011, prison officials at Tehachapi State Prison affixed an “R” suffix to Mr. Horton’s custody designation after he received a rule violation report for indecent exposure. (ECF No. 9 at 12.) Later, “a classification staff representative (CSR) on 11/15/2011 denied the request to affix the unnecessary suffix to this petitioner’s custody” because Mr. Horton had not received notice of the intended action. (*Id.*) “However, CDCR (Pelican Bay State Prison) chose” to apply the “R” suffix to Mr. Horton’s custody designation. (*Id.*) The “R” suffix was applied “without proper due process rights to a hearing to determine the legitimacy of this adverse affect to [Mr. Horton’s] program.” (*Id.* at 8.) Mr. Horton informed assistant chief deputy warden D. Bradbury that the “R” suffix was undeserved because Mr. Horton had not been arrested, charged or convicted of a sex offense, but assistant chief deputy warden Bradbury said that did not matter. (*Id.* at 12-13.) Mr. Horton also informed assistant chief deputy warden Bradbury that he “faced imminent (sic) harm for having a sex offender suffix. He responded to ‘watch myself.’” (*Id.* at 13.)

On July 25, 2014, Mr. Horton was attacked by an inmate who became aware of the “R” suffix on Mr. Horton’s custody designation and attacked him because of that suffix. (*Id.* at 13; ECF No. 9-1 at 3.) Mr. Horton was charged with battery and put in lock-up, where he lost certain privileges and suffered mental deterioration.

Thereafter, Mr. Horton pursued an inmate appeal in which he informed the appeals coordinator, correctional officer (“C/O”) M. Hodges. of the wrongly-imposed “R” suffix. C/O Hodges refused to correct the problem. (ECF No. 9 at 13.)

² As explained in the order of dismissal with leave to amend, the California Department of Corrections and Rehabilitation (CDCR) uses letter designations for some classification and custody purposes. An “R” suffix is used as a custody designation to indicate that an inmate has a history of sex offenses. *See* Cal. Code Regs. tit. 15, § 3377.1; *see, e.g., id.* at § 3377.1(b) (“An ‘R’ suffix shall be affixed to an inmate’s custody designation to ensure the safety of inmates, correctional personnel, and the general public by identifying inmates who have a history of specific sex offenses as outlined in Penal Code (PC) Section 290.”)

1 The “‘R’ suffix requires [Mr. Horton] to register as a sex offender.” (*Id.* at 14.) The “R” suffix
2 also impedes Mr. Horton’s access to certain job placements, family visits, and housing. (*Id.* at 15.)
3 “[B]eing labeled a sex offender is dangerous to a prisoner and detrimental to one’s safety” because
4 other prisoners attack such offenders. (*Id.* at 18.)

5 Mr. Horton asserts that his right to due process and right to be free of cruel and unusual
6 punishment have been violated by the retention of the “R” suffix on his custody designation. His
7 amended complaint names three defendants in their official and individual capacities, and seeks
8 monetary, declaratory and injunctive relief. (ECF No. 9 at 10; ECF No. 9-1 at 5.)

ANALYSIS

10 A federal court must engage in a preliminary screening of any case in which a prisoner seeks
11 redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C.
12 § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims
13 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
14 monetary relief from a defendant who is immune from such relief. *See id.* at § 1915A(b). *Pro se*
15 complaints must be liberally construed. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).

16 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right
17 secured by the Constitution or laws of the United States was violated, and (2) that the violation
18 was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48
19 (1988).

20 1. Due Process Claim

21 The Due Process Clause of the Fourteenth Amendment of the U.S. Constitution protects
22 individuals against governmental deprivations of life, liberty or property without due process of
23 law. Interests that are procedurally protected by the Due Process Clause may arise from two
24 sources: the Due Process Clause itself and laws of the states. *See Meachum v. Fano*, 427 U.S. 215,
25 223-27 (1976). In the prison context, these interests are generally ones pertaining to liberty.
26 Changes in conditions so severe as to affect the sentence imposed in an unexpected manner
27 implicate the Due Process Clause itself, whether or not they are authorized by state law. *See*
28 *Sandin v. Conner*, 515 U.S. 472, 484 (1995) (citing *Vitek v. Jones*, 445 U.S. 480, 493 (1980))

1 (transfer to mental hospital), and *Washington v. Harper*, 494 U.S. 210, 221-22 (1990) (involuntary
2 administration of psychotropic drugs)). Deprivations that are less severe or more closely related to
3 the expected terms of confinement may also amount to deprivations of a procedurally protected
4 liberty interest, provided that the liberty in question is one of “real substance.” *See Sandin*, 515
5 U.S. at 477-87. An interest of “real substance” will generally be limited to freedom from restraint
6 that imposes an “atypical and significant hardship on the inmate in relation to the ordinary
7 incidents of prison life” or “will inevitably affect the duration of [a] sentence.” *Id.* at 484, 487.

8 A classification decision that results in a prisoner being labeled a sex offender *might*, under
9 certain circumstances, result in a deprivation of a liberty interest of real substance. *See Neal v.*
10 *Shimoda*, 131 F.3d 818, 827-30 (9th Cir. 1997). In *Neal*, the court held that the state’s program
11 that labeled a prisoner as sex offender *and* required him to successfully complete a treatment
12 program as a precondition for parole eligibility implicated a constitutionally-protected liberty
13 interest such that procedural protections were required before the sex offender label could be
14 placed on the prisoner. *Id.* at 828-29. It was not merely the “sex offender” label, but the
15 consequences that flowed from that label that combined to create a protected liberty interest in
16 *Neal*. *See, e.g., Hogg v. Cox*, 2016 WL 4151404, *1 (9th Cir. 2016) (due process claim based on
17 classification of inmate as a sex offender properly dismissed because plaintiff did not allege facts
18 sufficient to show that the classification implicated a liberty interest and that he was denied
19 procedural protections prior to his classification, but district court erred in not giving plaintiff
20 leave to amend to cure those deficiencies); *Barbo v. Ryan*, 399 F. App’x 272, 273 (9th Cir. 2010)
21 (due process claim based on inmate’s classification as a sex offender properly dismissed “because
22 the alleged classification error did not result in any deprivation or changes in the conditions of
23 confinement that constituted an ‘atypical and significant hardship’”)

24 The amended complaint alleges that one of the burdens that flowed from the imposition of the
25 “R” suffix is that Mr. Horton must register as a sex offender. Accepting that as true, as the court
26 must at the pleading stage, the amended complaint alleges sufficient facts to show an atypical and
27 significant hardship was imposed on Mr. Horton. Liberally construed, the amended complaint
28 states a due process claim based on the alleged failure to hold a hearing and the insufficiency of

1 the evidence to support the decision to retain the “R” suffix.

2 **2. Eighth Amendment Claim**

3 The Eighth Amendment requires that prison officials take reasonable measures to guarantee
4 the safety of prisoners. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). In particular, prison
5 officials have a duty to protect prisoners from violence at the hands of other prisoners. *Id.* at 833.
6 A § 1983 claim may be stated under the Eighth Amendment against prison officials where the
7 officials acted with “deliberate indifference” to the threat of serious harm or injury to a prisoner by
8 spreading certain rumors about the prisoner or otherwise disclosing information to other prisoners
9 that would endanger the prisoner. *See Valandingham v. Bojorquez*, 866 F.2d 1135, 1138 (9th Cir.
10 1989) (allegation that prison officials deliberately spread rumor that prisoner is snitch may state
11 claim for violation of right to be protected from violence while in state custody). To be liable in a
12 failure-to-prevent-harm situation or for disclosing information about a prisoner, the official must
13 know of and disregard an excessive risk to prisoner safety. *See Farmer*, 511 U.S. at 837. The
14 official must both know of “facts from which the inference could be drawn” that an excessive risk
15 of harm exists, and he or she must actually draw that inference. *Id.*

16 The amended complaint alleges that Mr. Horton alerted assistant chief deputy Bradbury and
17 C/O Hodges to the danger he faced from the “R” suffix, and both failed and refused to do anything
18 to address the situation. Liberally construed, the amended complaint states a claim against
19 defendants Bradbury and Hodges for an Eighth Amendment violation based on their alleged
20 deliberate indifference to a risk to Mr. Horton’s safety.

21 The amended complaint also names CDCR Director J. Beard as a defendant. The amended
22 complaint does not allege that CDCR Director Beard took part in the decision-making with regard
23 to the “R” suffix, so the claims against him in his *individual* capacity are dismissed. The action
24 against him in his *official* capacity may proceed because he allegedly is responsible for the
25 conditions in the CDCR and Mr. Horton’s inmate appeal was denied at the director’s level. (ECF
26 No. 9 at 13, 14.) He apparently has statewide authority within the CDCR, and may be in a position
27 to implement injunctive relief if it is granted.

CONCLUSION

- 1 1. Liberally construed, the amended complaint states cognizable § 1983 claims against
2 defendants Bradbury, Hodges and Beard. All other defendants and claims are dismissed. .
3
- 4 2. The clerk shall issue a summons and the United States Marshal shall serve, without
5 prepayment of fees, the summons, a copy of the complaint and amended complaint, a copy of all
6 the documents in the case file, and a copy of the “consent or declination to magistrate judge
7 jurisdiction” form upon the following three defendants:
8 - D. Bradbury (assistant chief deputy warden at Pelican Bay)
9 - M. Hodges (correctional officer/appeals coordinator at Pelican Bay)
- Jeffrey Beard (Director, CDCR headquarters in Sacramento)

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

- 12 a. No later than **March 24, 2017**, the defendants must file and serve a motion for
13 summary judgment or other dispositive motion. If the defendants are of the opinion that this case
14 cannot be resolved by summary judgment, the defendants must so inform the Court prior to the
date the motion is due. If the defendants file a motion for summary judgment, the defendants must
15 provide to the 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). If the motion is
16 based on nonexhaustion of administrative remedies, the defendants must comply with the notice
17 and procedural requirements in *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014).

- 18 b. The plaintiff must serve and file his opposition to the summary judgment or other
19 dispositive motion no later than **April 21, 2017**. The plaintiff must bear in mind the notice and
20 warning regarding summary judgment provided later in this order as he prepares his opposition to
any motion for summary judgment.

- 21 c. If the defendants wish to file a reply brief, the reply brief must be filed and served
22 no later than **May 5, 2017**.

- 23 4. The plaintiff is provided the following notices and warnings about the procedures for
24 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 or she is seeking to have the case dismissed. A plaintiff faced with such a motion can oppose it using the same methods as described above for other summary judgment motions. As with other defense summary judgment motions, if a motion for summary judgment for failure to exhaust administrative remedies is granted, the case will be dismissed and there will be no trial.

5. All communications by the plaintiff with the court must be served on a defendant's counsel by mailing a true copy of the document to the 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, the plaintiff may serve a document by mailing a true copy of the document directly to the 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. The plaintiff is responsible for prosecuting this case. The 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

1 to Federal Rule of Civil Procedure 41(b). The plaintiff must file a notice of change of address in
2 every pending case every time he is moved to a new facility or is released from custody.

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

5 **IT IS SO ORDERED.**

6 Dated: January 11, 2017

7 
8 LAUREL BEELER
9 United States Magistrate Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4 MICHAEL J. HORTON,
5 Plaintiff,
6 v.
7 D. BRADBURY, et al.,
8 Defendants.
9

10 Case No. 16-cv-06411-LB
11

12 **CERTIFICATE OF SERVICE**
13

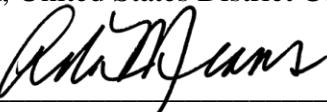
14 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
15 District Court, Northern District of California.
16

17 That on January 11, 2017, I SERVED a true and correct copy(ies) of the attached, by
18 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
19 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
20 receptacle located in the Clerk's office.
21

22 Michael J. Horton ID: P38483
23 California State Prison - SAC
24 PO Box 290066
25 Represa, CA 95671
26

27 Dated: January 11, 2017
28

29 Susan Y. Soong
30 Clerk, United States District Court

31 By: 
32 Ada Means, Deputy Clerk to the
33 Honorable LAUREL BEELER
34