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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREG CORSER,

No. C 16-7135 WHA (PR)

Plaintiff,

ORDER OF SERVICE

v.

HANK SCHREEDER; MICHAEL
DATZOLD; IAN H. BERNER;
OFFICER WOODS; M. SPEDIACCI;
JENEANE R. KUCKER,

Defendants.

_____ /

INTRODUCTION

Plaintiff, an inmate at the Sonoma County Jail, filed this civil rights case under 42 U.S.C. 1983 against officers and employees of the Santa Rosa Police Department for using excessive force during the course of his arrest. He is granted leave to proceed in forma pauperis in a separate order. For the reasons discussed below, the complaint is ordered served upon defendants.

ANALYSIS

A. 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). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro

1 se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699
2 (9th Cir. 1990).

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

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

18 **B. LEGAL CLAIMS**

19 Plaintiff alleges that after a chase by officers of the Santa Rosa Police Department, he
20 got out of his truck, lay down flat on his stomach on the ground with his arms spread and told
21 the officers he was not resisting. He alleges that defendant Officer Michael Datzold sicced a
22 police dog on plaintiff, and the dog bit plaintiff on the arm and the side. Defendant Officer Ian
23 H. Berner stood over him while he was being bit and told him to stop resisting. Defendants
24 Officer Woods and Detective M. Spediacci were present and failed to intervene. When liberally
25 construed, these allegations state a cognizable claim against defendants Datzold, Berner, Woods
26 and Spediacci for using excessive force during plaintiff's arrest in violation of his Fourth
27 Amendment rights.
28

1 The only allegation against defendant Hank Schreeder is that he is the Chief of Police,
2 and the only allegation against defendant Jeneane R. Kucker is that she is a supervisor. These
3 allegations are not sufficient to state a cognizable claim against them because supervisors are
4 not liable for the actions of their subordinates under Section 1983. *See Taylor v. List*, 880 F.2d
5 1040, 1045 (9th Cir. 1989) (there is no respondeat superior liability under Section 1983).

6 **CONCLUSION**

7 For the reasons set out above, it is hereby ordered as follows:

- 8 1. The claims against defendants Schreeder and Kucker are **DISMISSED**.
- 9 2. The clerk shall issue summons and the United States Marshal shall serve, without
10 prepayment of fees, a copy of the complaint with all attachments thereto, and a copy of this
11 order upon defendants **Officer Michael Datzold, Officer Woods, Detective M. Spediacci, and**
12 **Officer Ian H. Berner** at the **Santa Rosa Police Department**. A courtesy copy of the
13 complaint with attachments and this order shall also be mailed to the Santa Rosa City
14 Attorney's Office.
 - 15 2. Defendants **shall** file an answer in accordance with the Federal Rules of Civil
16 Procedure.
 - 17 3. In order to expedite the resolution of this case:
 - 18 a. No later than **91 days** from the date this order is filed, defendants shall file a
19 motion for summary judgment or other dispositive motion. If defendants are of the opinion that
20 this case cannot be resolved by summary judgment, he shall so inform the court prior to the date
21 the summary judgment motion is due. All papers filed with the court shall be promptly served
22 on the plaintiff.
 - 23 b. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the
24 court and served upon defendant no later than **28 days** from the date of service of the motion.
25 Plaintiff must read the attached page headed "NOTICE -- WARNING," which is provided to
26 him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc), and
27 *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

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c. Defendants **shall** file a reply brief no later than **14 days** after the date of service of the opposition.

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

e. Along with his motion, defendants shall file proof that they served plaintiff the *Rand* warning at the same time they served him with their motion. Failure to do so will result in the summary dismissal of their motion.


4. All communications by the plaintiff with the court must be served on defendant, or defendant's counsel once counsel has been designated, by mailing a true copy of the document to defendant or defendant's counsel.

5. 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 16-1 is required before the parties may conduct discovery.

6. It is the plaintiff's responsibility to prosecute this case. Plaintiff must 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 to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: May 4, 2017.



WILLIAM ALSUP
UNITED STATES DISTRICT 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 [current Rule 56(c)], that contradict the facts shown in the 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.