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

JERRY HAMILTONHAUSEY,
Plaintiff,

No. C 17-1180 WHA (PR)
SCHEDULING ORDER

v.

JILL R. LEWIS,
Defendants.

INTRODUCTION

Plaintiff, an inmate at San Quentin State Prison (“SQSP”), filed this civil rights action in state court against Jill Lewis, a correctional officer at SQSP. Plaintiff was granted leave to amend, and he has filed a timely amended complaint.

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 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

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

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

15 **B. LEGAL CLAIMS**

16 There are four different pleadings on the docket that are called "amended complaint"
17 (ECF Nos. 25, 29-31). Docket number 30 is the most complete and encompasses the allegations
18 included in the others. Therefore, docket number 30 is construed as the operative amended
19 complaint. It is noted that docket number 30 bears the wrong case number, but the caption and
20 contents make it clear that the pleading is part of this case. Therefore, the Clerk shall change
21 the case number in the caption of docket number 30 to this case's case number (C No. C 17-
22 1180 WHA (Pr)).

23 Plaintiff's allegations that defendant fired him from his prison job based upon racial and
24 gender bias, when liberally construed, sufficiently state a cognizable claim for the violation of
25 his constitutional right to equal protection of the laws. *See Walker v. Gomez*, 370 F.3d 969, 973
26 (9th Cir. 2004).

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CONCLUSION

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

1. Defendant **shall** file an answer in accordance with the Federal Rules of Civil Procedure.

2. In order to expedite the resolution of this case:

a. No later than **91 days** from the date this order is filed, defendants shall file a motion for summary judgment or other dispositive motion. If defendants are of the opinion that this case cannot be resolved by summary judgment, they shall so inform the court prior to the date the summary judgment motion is due. All papers filed with the court shall be promptly served on the plaintiff.

b. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the court and served upon defendants no later than **28 days** from the date of service of the motion. Plaintiff must read the attached page headed "NOTICE -- WARNING," which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc), and *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

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 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.

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

4. 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

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required before the parties may conduct discovery.

5. 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: July 17, 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.