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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN GILMORE,
Plaintiff,

v.

LOPEZ, et al.,
Defendants.

Case No. [17-cv-03024-JCS](#) (PR)

ORDER OF SERVICE;

**ORDER DIRECTING DEFENDANTS
TO FILE A DISPOSITIVE MOTION
OR NOTICE REGARDING SUCH
MOTION;**

INSTRUCTIONS TO CLERK

INTRODUCTION

Plaintiff alleges in this 42 U.S.C. § 1983 action that his jailors at CTF Soledad failed to protect him from a violent inmate and denied him access to the courts.¹

The operative complaint (Dkt. No. 1) states cognizable claims. Therefore, in response to the operative complaint, defendants are directed to file a dispositive motion or notice regarding such motion on or before **November 6, 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

¹ Plaintiff consented to magistrate judge jurisdiction. (Dkt. No. 3.) The magistrate judge, then, has jurisdiction to issue this order, even though defendants have not been served or consented to magistrate judge jurisdiction. *See Neals v. Norwood*, 59 F.3d 530, 532 (5th Cir. 1995).

1 monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C.
2 § 1915(e). Pro se pleadings must be liberally construed. *See Balistreri v. Pacifica Police*
3 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

4 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a
5 claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
6 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
7 plausibility when the plaintiff pleads factual content that allows the court to draw the
8 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting
9 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal
10 conclusions cast in the form of factual allegations if those conclusions cannot reasonably
11 be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55
12 (9th Cir. 1994).

13 **B. Legal Claims**

14 Plaintiff alleges that (1) CTF Soledad prison guards Lopez, Hidalgo, and C.
15 Liberatore, all working at Lassen Hall at the time of events, failed to protect him from an
16 inmate who stabbed plaintiff seven times in the face; and (2) Enrique Galvan, a prison
17 litigation coordinator at Soledad, and Williams, a sergeant in the investigative services unit
18 of Soledad, prevented plaintiff from accessing the courts when he tried to file the present
19 suit. When liberally construed, these allegations state cognizable claims for relief.

20 **CONCLUSION**

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

- 22 1. The Clerk of the Court shall issue summons and a Magistrate Judge
23 jurisdiction consent form and the United States Marshal shall serve these forms, without
24 prepayment of fees, along with a copy of the operative complaint in this matter (Dkt. No.
25 1), all attachments thereto, and a copy of this order upon Lopez, Hidalgo, C. Liberatore,
26 Enrique Galvan, and Williams at CTF Soledad. The Clerk shall also mail courtesy copies
27 of the operative complaint and this order to the California Attorney General’s Office.
- 28 2. On or before **November 6, 2017**, defendants shall file a motion for summary

1 judgment or other dispositive motion with respect to the claims in the complaint found to
2 be cognizable above.

3 a. If defendants elect to file a motion to dismiss on the grounds plaintiff
4 failed to exhaust his available administrative remedies as required by 42 U.S.C.
5 § 1997e(a), defendants shall do so in a motion for summary judgment, as required by
6 *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014).

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

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

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

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

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

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

26 8. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the
27 Court informed of any change of address and must comply with the Court's orders in a
28 timely fashion. Failure to do so may result in the dismissal of this action for failure to

1 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

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

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

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

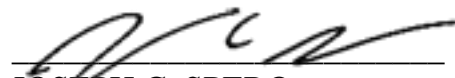
14 Rule 56 tells you what you must do in order to oppose a motion for
15 summary judgment. Generally, summary judgment must be granted when
16 there is no genuine issue of material fact — that is, if there is no real
17 dispute about any fact that would affect the result of your case, the party
18 who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

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

24 **IT IS SO ORDERED.**

25 **Dated:** July 27, 2017

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JOSEPH C. SPERO
Chief Magistrate Judge

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NORTHERN DISTRICT OF CALIFORNIA

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Case No. [17-cv-03024-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 July 27, 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.

John Gilmore ID: AS7588
2260 Chatterton Lane
Norco, CA 92860

Dated: July 27, 2017

Susan Y. Soong
Clerk, United States District Court

By: Karen L. Hom
Karen Hom, Deputy Clerk to the
Honorable JOSEPH C. SPERO