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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLIFTON J. TERRELL,
Plaintiff,

v.

C. E. DUCART, et al.,
Defendants.

Case No. [17-cv-03924-WHO](#) (PR)

ORDER OF SERVICE;

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

INSTRUCTIONS TO CLERK

INTRODUCTION

Plaintiff Clifton Terrell alleges that staff at Pelican Bay State Prison violated his First Amendment rights when they failed to respond to his requests for a kosher diet. His 42 U.S.C. § 1983 civil rights complaint containing these allegations is now before the Court for review pursuant to 28 U.S.C. § 1915A(a).

Having concluded that the amended complaint (Dkt. No. 10) states cognizable claims against defendants, the Court directs defendants to file in response to the amended complaint a dispositive motion, or notice regarding such motion, on or before **January 29, 2018**, unless an extension is granted. The Court further directs that defendants comply with the notice provisions detailed in Sections 2.a and 10 of the conclusion of this order.

1 **DISCUSSION**

2 **A. Standard of Review**

3 A federal court must conduct a preliminary screening in any case in which a
4 prisoner seeks redress from a governmental entity or officer or employee of a
5 governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any
6 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim
7 upon which relief may be granted or seek monetary relief from a defendant who is immune
8 from such relief. *See id.* § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.
9 *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

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

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

23 **B. Legal Claims**

24 Terrell claims the following Pelican Bay State Prison employees ignored his
25 requests to have kosher meals: (i) C.E. Ducart, the warden of Pelican Bay; (ii) Robert
26 Losacco, Community Resource Manager; (iii) Gary Abdullah, Religious Diet Coordinator;
27 (iv) M. Gomez, a cook supervisor; (v) R. Peterson, a correctional officer; and (vi) Officer
28 Holt, a correctional officer. When liberally construed, Terrell has stated cognizable First

1 Amendment claims against these defendants.

2 **CONCLUSION**

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

4 1. The Clerk of the Court shall issue summons and the United States Marshal
5 shall serve, without prepayment of fees, a copy of the complaint in this matter (Dkt.
6 No. 10), all attachments thereto, and a copy of this order upon (i) C.E. Ducart, the warden
7 of Pelican Bay; (ii) Robert Losacco, Community Resource Manager; (iii) Gary Abdullah,
8 Religious Diet Coordinator; (iv) M. Gomez, a cook supervisor; (v) R. Peterson, a
9 correctional officer; and (vi) Officer Holt, a correctional officer. The Clerk shall also mail
10 courtesy copies of the amended complaint (Dkt. No. 10) and this order to the California
11 Attorney General's Office.

12 2. On or before **January 29, 2018**, defendants shall file a motion for summary
13 judgment or other dispositive motion with respect to the claim(s) in the complaint found to
14 be cognizable above.

15 a. If defendants elect to file a motion to dismiss on the grounds plaintiff
16 failed to exhaust his available administrative remedies as required by 42 U.S.C.
17 § 1997e(a), defendants shall do so in a motion for summary judgment, as required by
18 *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014).

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

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

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

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

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

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

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

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

17 10. A decision from the Ninth Circuit requires that pro se prisoner-plaintiffs be
18 given "notice of what is required of them in order to oppose" summary judgment motions
19 at the time of filing of the motions, rather than when the court orders service of process or
20 otherwise before the motions are filed. *Woods v. Carey*, 684 F.3d 934, 939-41 (9th Cir.
21 2012). Defendants shall provide the following notice to plaintiff when they file and serve
22 any motion for summary judgment:

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

27 Rule 56 tells you what you must do in order to oppose a motion for summary
28 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


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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).

IT IS SO ORDERED.

Dated: October 19, 2017


WILLIAM H. ORRICK
United States District Judge