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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

RONALD YANDELL,

Plaintiff,

No. C 10-5811 PJH (PR)

v.

ORDER OF SERVICE

MATHEW CATE, FRANCISCO
JACQUEZ, G. D. LEWIS, C.
COUNTESS, J. E. PIEREN, D.
BARNEBURG, J. L. McKINNEY,
and G. WILLIAMS,

Defendants.

Plaintiff, an inmate at Pelican Bay State Prison, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has paid the filing fee.

DISCUSSION

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 claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the

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1 grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations
2 omitted). Although in order to state a claim a complaint "does not need detailed factual
3 allegations, . . . a plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief'
4 requires more than labels and conclusions, and a formulaic recitation of the elements of a
5 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
6 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
7 (citations omitted). A complaint must proffer "enough facts to state a claim for relief that is
8 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
9 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
10 framework of a complaint, they must be supported by factual allegations. When there are
11 well-pleaded factual allegations, a court should assume their veracity and then determine
12 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 129 S.Ct.
13 1937, 1950 (2009). However, complaints in pro se prisoner cases, such as this one, must
14 be liberally construed in favor of the plaintiff when applying the *Twombly/Iqbal* pleading
15 standard. *Hebbe v. Miller*, 627 F.3d 338, 342 (9th Cir. 2010).

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

20 **B. Legal Claims**

21 Plaintiff contends that the defendants had various roles in validating him as a
22 member of a prison gang, which resulted in his being placed indefinitely in the Security
23 Housing Unit at Pelican Bay. He asserts that the validation violated his First Amendment
24 rights of association, even as limited by his imprisonment; his due process rights as
25 recognized by a class action case in this court, *Castillo v. Marshall*, C-94-1847 MJJ; his
26 Due Process rights with regard to the validation itself; his First Amendment right to be free
27 from retaliation for refusal to speak; and certain state law rights. These allegations are
28 sufficient to require a response.

1 **CONCLUSION**

2 For the foregoing reasons,

3 1. The clerk shall issue summons and the United States Marshal shall serve,
4 without prepayment of fees, copies of the complaint with attachments and copies of this
5 order on the following defendants: Francisco Jacquez, G. D. Lewis, C. Countess, J. E.
6 Pieren, D. Barneburg, and J. L. Mckinney, who plaintiff says can be found at Pelican Bay
7 State Prison, and Matthew Cate and G. Williams, who he says can be found at the
8 headquarters of the CDCR in Sacramento.

9 2. In order to expedite the resolution of this case, the court orders as follows:

10 a. No later than sixty days from the date of service, defendants shall file a
11 motion for summary judgment or other dispositive motion. The motion shall be supported
12 by adequate factual documentation and shall conform in all respects to Federal Rule of
13 Civil Procedure 56, and shall include as exhibits all records and incident reports stemming
14 from the events at issue. If defendants are of the opinion that this case cannot be resolved
15 by summary judgment, they shall so inform the court prior to the date their summary
16 judgment motion is due. All papers filed with the court shall be promptly served on the
17 plaintiff.

18 b. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the
19 court and served upon defendants no later than thirty days from the date the motion was
20 served upon him. Plaintiff must read the attached page headed "NOTICE -- WARNING,"
21 which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir.
22 1998) (en banc), and *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

23 If defendants file an unenumerated motion to dismiss claiming that plaintiff failed to
24 exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a), plaintiff
25 should take note of the attached page headed "NOTICE -- WARNING (EXHAUSTION),"
26 which is provided to him as required by *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4 (9th
27 Cir. 2003).

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1 c. If defendants wish to file a reply brief, they shall do so no later than fifteen
2 days after the opposition is served upon them.

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

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

8 5. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the court
9 informed of any change of address by filing a separate paper with the clerk headed "Notice
10 of Change of Address." He also must comply with the court's orders in a timely fashion.
11 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
12 Federal Rule of Civil Procedure 41(b).

13 **IT IS SO ORDERED.**

14 Dated: November 10, 2011.



PHYLLIS J. HAMILTON
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 Rule 56(e), 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.

NOTICE -- WARNING (EXHAUSTION)

If defendants file an unenumerated motion to dismiss for failure to exhaust, they are seeking to have your case dismissed. If the motion is granted it will end your case.

You have the right to present any evidence you may have which tends to show that you did exhaust your administrative remedies. Such evidence may be in the form of declarations (statements signed under penalty of perjury) or authenticated documents, that is, documents accompanied by a declaration showing where they came from and why they are authentic, or other sworn papers, such as answers to interrogatories or depositions.

If defendants file a motion to dismiss and it is granted, your case will be dismissed and there will be no trial.