

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

3 OMAR REYNOSO,

No. C 11-4525 CW (PR)

4 Plaintiff,

ORDER OF SERVICE

5 v.

6 CHIEF MEDICAL OFFICER MICHAEL
7 SAYRE, et al.,

8 Defendants.
9 _____/

10 INTRODUCTION

11 Plaintiff, a state prisoner incarcerated at Pelican Bay State
12 Prison (PBSP), has filed a pro se civil rights action pursuant to
13 42 U.S.C. § 1983, alleging deliberate indifference to his serious
14 medical needs and negligence. His motion for leave to proceed in
15 forma pauperis has been granted.

16 In his complaint, Plaintiff names the following Defendants:
17 PBSP Chief Medical Officer Michael Sayre, PBSP Primary Care
18 Provider Laurie Thomas, PBSP Primary Care Provider Adams and PBSP
19 Acting Warden Jacquez. Plaintiff seeks monetary damages and
20 injunctive relief.

21 DISCUSSION

22 I. Standard of Review

23 A federal court must conduct a preliminary screening in any
24 case in which a prisoner seeks redress from a governmental entity
25 or officer or employee of a governmental entity. 28 U.S.C.
26 § 1915A(a). In its review, the court must identify any cognizable
27 claims and dismiss any claims that are frivolous, malicious, fail
28 to state a claim upon which relief may be granted or seek monetary

1 relief from a defendant who is immune from such relief. Id.
2 § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.
3 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
4 1988).

5 To state a claim under 42 U.S.C. § 1983, a plaintiff must
6 allege two essential elements: (1) that a right secured by the
7 Constitution or laws of the United States was violated, and
8 (2) that the alleged violation was committed by a person acting
9 under the color of state law. West v. Atkins, 487 U.S. 42, 48
10 (1988).

11 DISCUSSION

12 Plaintiff alleges as follows: Plaintiff suffers from chronic
13 lower back pain caused by degenerative disk disease. Prior to his
14 transfer to PBSP in January 2010, he received adequate care for
15 his condition at Corcoran State Prison. Since his arrival at
16 PBSP, however, Defendants have failed to provide him with proper
17 diagnostic procedures, treatment and pain relief.

18 Plaintiff's allegations, when liberally construed, state a
19 cognizable claim for deliberate indifference to his serious
20 medical needs, in violation of the Eighth Amendment. See Estelle
21 v. Gamble, 429 U.S. 97, 104 (1976). The Court also will exercise
22 supplemental jurisdiction over Plaintiff's state law negligence
23 claim arising from the same allegations. See 28 U.S.C. § 1367(c).

24 CONCLUSION

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

26 1. The Clerk of the Court shall mail a Notice of Lawsuit and
27 Request for Waiver of Service of Summons, two copies of the Waiver
28 of Service of Summons, a copy of the complaint and all attachments

1 thereto (docket no. 1) and a copy of this Order to PBSP Chief
2 Medical Officer Michael Sayre, PBSP Primary Care Provider Laurie
3 Thomas, PBSP Primary Care Provider Adams and PBSP Acting Warden
4 Francisco Jacquez. The Clerk of the Court shall also mail a copy
5 of the complaint and a copy of this Order to the State Attorney
6 General's Office in San Francisco. Additionally, the Clerk shall
7 mail a copy of this Order to Plaintiff.

8 2. Defendants are cautioned that Rule 4 of the Federal Rules
9 of Civil Procedure requires them to cooperate in saving
10 unnecessary costs of service of the summons and complaint.

11 Pursuant to Rule 4, if Defendants, after being notified of this
12 action and asked by the Court, on behalf of Plaintiff, to waive
13 service of the summons, fail to do so, they will be required to
14 bear the cost of such service unless good cause be shown for their
15 failure to sign and return the waiver form. If service is waived,
16 this action will proceed as if Defendants had been served on the
17 date that the waiver is filed, except that pursuant to Rule
18 12(a)(1)(B), Defendants will not be required to serve and file an
19 answer before sixty days from the date on which the request for
20 waiver was sent. (This allows a longer time to respond than would
21 be required if formal service of summons is necessary.)

22 Defendants are asked to read the statement set forth at the foot
23 of the waiver form that more completely describes the duties of
24 the parties with regard to waiver of service of the summons. If
25 service is waived after the date provided in the Notice but before
26 Defendants have been personally served, the Answer shall be due
27 sixty days from the date on which the request for waiver was sent
28 or twenty days from the date the waiver form is filed, whichever

1 is later.

2 3. Defendants shall answer the complaint in accordance with
3 the Federal Rules of Civil Procedure. The following briefing
4 schedule shall govern dispositive motions in this action:

5 a. No later than ninety days from the date their answer
6 is due, Defendants shall file a motion for summary judgment or
7 other dispositive motion. The motion shall be supported by
8 adequate factual documentation and shall conform in all respects
9 to Federal Rule of Civil Procedure 56. If Defendants are of the
10 opinion that this case cannot be resolved by summary judgment,
11 they shall so inform the Court prior to the date the summary
12 judgment motion is due. All papers filed with the Court shall be
13 promptly served on Plaintiff.

14 b. Plaintiff's opposition to the dispositive motion
15 shall be filed with the Court and served on Defendants no later
16 than sixty days after the date on which Defendants' motion is
17 filed. The Ninth Circuit has held that the following notice
18 should be given to pro se plaintiffs facing a summary judgment
19 motion:

20 The defendant has made a motion for summary
21 judgment by which they seek to have your case dismissed.
22 A motion for summary judgment under Rule 56 of the
Federal Rules of Civil Procedure will, if granted, end
your case.

23 Rule 56 tells you what you must do in order to
24 oppose a motion for summary judgment. Generally, summary
25 judgment must be granted when there is no genuine issue
26 of material fact -- that is, if there is no real dispute
27 about any fact that would affect the result of your case,
28 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

1 facts in declarations, depositions, answers to
2 interrogatories, or authenticated documents, as provided
3 in Rule 56(e), that contradict the facts shown in the
4 defendant's declarations and documents and show that
5 there is a genuine issue of material fact for trial. If
6 you do not submit your own evidence in opposition,
7 summary judgment, if appropriate, may be entered against
8 you. If summary judgment is granted [in favor of the
9 defendants], your case will be dismissed and there will
10 be no trial.

11 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en
12 banc).

13 Plaintiff is advised to read Rule 56 of the Federal Rules of
14 Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
15 (party opposing summary judgment must come forward with evidence
16 showing triable issues of material fact on every essential element
17 of his claim). Plaintiff is cautioned that because he bears the
18 burden of proving his allegations in this case, he must be
19 prepared to produce evidence in support of those allegations when
20 he files his opposition to Defendants' dispositive motion. Such
21 evidence may include sworn declarations from himself and other
22 witnesses to the incident, and copies of documents authenticated
23 by sworn declaration. Plaintiff will not be able to avoid summary
24 judgment simply by repeating the allegations of his complaint.

25 c. Defendants shall file a reply brief no later than
26 thirty days after the date Plaintiff's opposition is filed.

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

4. Discovery may be taken in this action in accordance with
the Federal Rules of Civil Procedure. Leave of the Court pursuant
to Rule 30(a)(2) is hereby granted to Defendants to depose

1 Plaintiff and any other necessary witnesses confined in prison.

2 5. All communications by Plaintiff with the Court must be
3 served on Defendants, or Defendants' counsel once counsel has been
4 designated, by mailing a true copy of the document to Defendants
5 or Defendants' counsel.

6 6. It is Plaintiff's responsibility to prosecute this case.
7 Plaintiff must keep the Court informed of any change of address
8 and must comply with the Court's orders in a timely fashion.

9 7. Extensions of time are not favored, though reasonable
10 extensions will be granted. Any motion for an extension of time
11 must be filed no later than fifteen days prior to the deadline
12 sought to be extended.

13 IT IS SO ORDERED.

14 DATED: 4/10/2012


15 CLAUDIA WILKEN
16 UNITED STATES DISTRICT JUDGE
17
18
19
20
21
22
23
24
25
26
27
28