

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

United States District Court
For the Northern District of California

ALFRED MARTIN,
Plaintiff,

v.

ANTHONY HEDGPETH, et al.,
Defendants.

No. C 12-3771 YGR (PR)

ORDER OF SERVICE;

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

INSTRUCTIONS TO CLERK

INTRODUCTION

This is a federal civil rights action filed pursuant to 42 U.S.C. § 1983 by a *pro se* state prisoner. The Court now reviews the complaint pursuant to 28 U.S.C. § 1915A(a). Defendants are directed to file a dispositive motion or notice regarding such motion on or before March 20, 2013, unless an extension is granted. **The Court further directs that defendants are to adhere to the new notice provisions detailed in Sections 2.a and 10 of the conclusion of this order.**

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that 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. *See id.* § 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

B. Legal Claims

Plaintiff alleges that (1) Correctional Officer R. Mooring at Salinas Valley State Prison used excessive force against him in violation of the Eighth Amendment; and (2) Drs. Bowman, Gamboa and Bridgewell, and nurses Walker, Will, Gee, and Patty Laduke, provided constitutionally inadequate medical care in violation of the Eighth Amendment. Liberally construed, these claims are cognizable under § 1983. Plaintiff lists Anthony

1 Hedgpeth, the warden of Salinas Valley, as a defendant, but fails to provide any specific
2 allegations against him. Accordingly, his claims against Hedgpeth are DISMISSED.
3 Plaintiff mentions Drs. Pompan and Nathanson in his complaint, yet does not allege any facts
4 that state a claim under the Eighth Amendment. To the extent that he alleges claims against
5 these persons, they are DISMISSED.

6 CONCLUSION

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

8 1. The Clerk of the Court shall issue summons and the United States
9 Marshal shall serve, without prepayment of fees, a copy of the complaint in this matter, all
10 attachments thereto, and a copy of this order upon Correctional Officer R. Mooring, Drs.
11 Bowman, Gamboa and Bridgewell, and nurses Walker, Will, Gee, and Patty Laduke, all of
12 whom are at Salinas Valley State Prison. The Clerk shall also mail courtesy copies of the
13 complaint and this order to the California Attorney General's Office.

14 2. No later than ninety (90) days from the date of this order, defendants shall file
15 a motion for summary judgment or other dispositive motion with respect to the claims in the
16 complaint found to be cognizable above.

17 a. If defendants elect to file a motion to dismiss on the grounds plaintiff
18 failed to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a),
19 defendants shall do so in an unenumerated Rule 12(b) motion pursuant to *Wyatt v. Terhune*,
20 315 F.3d 1108, 1119–20 (9th Cir. 2003), cert. denied *Alameida v. Terhune*, 540 U.S. 810
21 (2003). **Plaintiff is “entitled to notice — similar to the notice for motions for summary
22 judgment described in *Rand v. Rowland*, 154 F.3d 952 (9th Cir.1998) (en banc) —
23 explaining the requirements for a response to” a motion to dismiss for failure to
24 exhaust administrative remedies.** *Stratton v. Buck*, No. 10-35656, slip op. 11477, 11483
25 (9th Cir. Sept. 19, 2012).

26 b. Any motion for summary judgment shall be supported by adequate
27 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of
28

1 Civil Procedure. Defendants are advised that summary judgment cannot be granted, nor
2 qualified immunity found, if material facts are in dispute. If any defendant is of the opinion
3 that this case cannot be resolved by summary judgment, he shall so inform the Court prior to
4 the date the summary judgment motion is due.

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

8 a. In the event the defendants file an unenumerated motion to dismiss
9 under Rule 12(b) (such as a motion to dismiss for failure to exhaust administrative remedies),
10 plaintiff is hereby cautioned as follows:

11 The defendants have made a motion to dismiss pursuant to Rule 12(b) of the
12 Federal Rules of Civil Procedure, on the ground you have not exhausted your administrative
13 remedies. The motion will, if granted, result in the dismissal of your case. When a party you
14 are suing makes a motion to dismiss for failure to exhaust, and that motion is properly
15 supported by declarations (or other sworn testimony) and/or documents, you may not simply
16 rely on what your complaint says. Instead, you must set out specific facts in declarations,
17 depositions, answers to interrogatories, or documents, that contradict the facts shown in the
18 defendant's declarations and documents and show that you have in fact exhausted your
19 claims. If you do not submit your own evidence in opposition, the motion to dismiss, if
20 appropriate, may be granted and the case dismissed.

21 b. In the event defendants file a motion for summary judgment, the Ninth
22 Circuit has held that the following notice should be given to plaintiffs:

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 Rule
25 56 of the Federal Rules of Civil Procedure will, if granted, end your case.
26 Rule 56 tells you what you must do in order to oppose a motion for summary
27 judgment. Generally, summary judgment must be granted when there is no
28 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

1 properly supported by declarations (or other sworn testimony), you cannot
2 simply rely on what your complaint says. Instead, you must set out specific
3 facts in declarations, depositions, answers to interrogatories, or authenticated
4 documents, as provided in Rule 56(e), that contradict the facts shown in the
5 defendants' declarations and documents and show that there is a genuine issue
6 of material fact for trial. If you do not submit your own evidence in opposition,
7 summary judgment, if appropriate, may be entered against you. If summary
8 judgment is granted in favor of defendants, your case will be dismissed and
9 there will be no trial. *See Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998)
10 (en banc). Plaintiff is advised to read Rule 56 of the Federal Rules of Civil
11 Procedure and *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (holding party
12 opposing summary judgment must come forward with evidence showing
13 triable issues of material fact on every essential element of his claim). Plaintiff
14 is cautioned that failure to file an opposition to defendants' motion for
15 summary judgment may be deemed to be a consent by plaintiff to the granting
16 of the motion, and granting of judgment against plaintiff without a trial. *See*
17 *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (per curiam); *Brydges v.*
18 *Lewis*, 18 F.3d 651, 653 (9th Cir. 1994).

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

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

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

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

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

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

1 10. A recent decision from the Ninth Circuit requires that *pro se* prisoner-plaintiffs
2 be given “notice of what is required of them in order to oppose” summary judgment motions
3 at the time of filing of the motions, rather than when the court orders service of process or
4 otherwise before the motions are filed. *Woods v. Carey*, No. 09-15548, slip op. 7871, 7874
5 (9th Cir. July 6, 2012). **Defendants shall provide the following notice to plaintiff when**
6 **they file and serve any motion for summary judgment:**

7 The defendants have made a motion for summary judgment by which they seek
8 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.

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

23 *Rand v. Rowland*, 154 F.3d 952, 962–63 (9th Cir. 1998).

24 **IT IS SO ORDERED.**

25 DATED: January 10, 2013

26 
27 YVONNE GONZALEZ ROGERS
28 UNITED STATES DISTRICT COURT JUDGE