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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

RODNEY GOLDSON,

Plaintiff,

No. C 13-0403 PJH (PR)

vs.

**ORDER OF SERVICE**

DR. CLARENE DAVID,

Defendant.

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Plaintiff, a state prisoner currently incarcerated at San Quentin State Prison, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. Plaintiff's original complaint was dismissed and he has filed an amended complaint.

**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 grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations

1 omitted). Although in order to state a claim a complaint “does not need detailed factual  
2 allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’  
3 requires more than labels and conclusions, and a formulaic recitation of the elements of a  
4 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief  
5 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)  
6 (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is  
7 plausible on its face.” *Id.* at 570. The United States Supreme Court has recently explained  
8 the “plausible on its face” standard of *Twombly*: “While legal conclusions can provide the  
9 framework of a complaint, they must be supported by factual allegations. When there are  
10 well-pleaded factual allegations, a court should assume their veracity and then determine  
11 whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 129 S.Ct.  
12 1937, 1950 (2009).

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

17 **B. Legal Claims**

18 Plaintiff states he has severe joint separation in his left shoulder. The sole  
19 defendant in this case, Dr. David, refused requests for an X-ray, MRI or a referral to an  
20 orthopedic specialist, from February 2012 to June 2012, even though plaintiff states he was  
21 in great pain. At some point plaintiff was referred to an orthopedic specialist who  
22 recommended surgery and noted that plaintiff’s condition worsened as a result of the delay.  
23 This claim is sufficient to proceed.

24 Deliberate indifference to serious medical needs violates the Eighth Amendment’s  
25 proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104  
26 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other*  
27 *grounds, WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc).  
28 A determination of “deliberate indifference” involves an examination of two elements: the

1 seriousness of the prisoner's medical need and the nature of the defendant's response to  
2 that need. *Id.* at 1059.

3 A "serious" medical need exists if the failure to treat a prisoner's condition could  
4 result in further significant injury or the "unnecessary and wanton infliction of pain." *Id.* The  
5 existence of an injury that a reasonable doctor or patient would find important and worthy of  
6 comment or treatment; the presence of a medical condition that significantly affects an  
7 individual's daily activities; or the existence of chronic and substantial pain are examples of  
8 indications that a prisoner has a "serious" need for medical treatment. *Id.* at 1059-60.

9 **CONCLUSION**

10 1. The clerk shall issue a summons and the United States Marshal shall serve,  
11 without prepayment of fees, copies of the complaint with attachments and copies of this  
12 order on the following defendant: Dr. Clarene David at San Quentin State Prison.

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

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

21 b. At the time the dispositive motion is served, defendant shall also serve, on  
22 a separate paper, the appropriate notice or notices required by *Rand v. Rowland*, 154 F.3d  
23 952, 953-954 (9th Cir. 1998) (en banc), and *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4  
24 (9th Cir. 2003). See *Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012) (*Rand* and  
25 *Wyatt* notices must be given at the time motion for summary judgment or motion to dismiss  
26 for nonexhaustion is filed, not earlier); *Rand* at 960 (separate paper requirement).

27 c. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the  
28 court and served upon defendants no later than thirty days from the date the motion was

1 served upon him. Plaintiff must read the attached page headed "NOTICE -- WARNING,"  
2 which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir.  
3 1998) (en banc), and *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

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

9 d. If defendant wishes to file a reply brief, she shall do so no later than fifteen  
10 days after the opposition is served upon her.

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

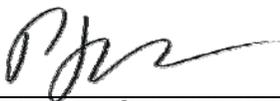
13 4. All communications by plaintiff with the court must be served on defendant, or  
14 defendant's counsel once counsel has been designated, by mailing a true copy of the  
15 document to defendants or defendants' counsel.

16 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.  
17 No further court order under Federal Rule of Civil Procedure 30(a)(2) is required before the  
18 parties may conduct discovery.

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

24 **IT IS SO ORDERED.**

25 Dated: May 15, 2013.

  
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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.