

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
OAKLAND DIVISION

JEROME LEROY ALLEN,
Plaintiff,

No. C 13-2938 PJH (PR)

vs.

ORDER OF SERVICE

SHERIFF MIKARIMI, et. al.,
Defendants.

Plaintiff, who is currently incarcerated at San Francisco County Jail, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted permission to proceed in forma pauperis.

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

United States District Court
For the Northern District of California

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 that he is Muslim but has been denied the ability to have group
19 worship, while non-Muslims are able to participate in group worship. This claim is sufficient
20 to proceed as a free exercise and Religious Land Use and Institutionalized Persons Act
21 (RLUIPA) violation.

22 In order to establish a free exercise violation, a prisoner must show a defendant
23 burdened the practice of his religion without any justification reasonably related to
24 legitimate penological interests. See *Shakur v. Schiro*, 514 F.3d 878, 883-84 (9th Cir.
25 2008).

26 Section 3 of RLUIPA provides: “No government shall impose a substantial burden on
27 the religious exercise of a person residing in or confined to an institution, as defined in
28 section 1997 [which includes state prisons, state psychiatric hospitals, and local jails], even

1 if the burden results from a rule of general applicability, unless the government
2 demonstrates that imposition of the burden on that person (1) is in furtherance of a
3 compelling governmental interest; and (2) is the least restrictive means of furthering that
4 compelling governmental interest." 42 U.S.C. § 2000cc-1(a).

5 Plaintiff has failed to connect the alleged constitutional violation to several
6 defendants, who will be dismissed from this action as there only involvement was being
7 sent grievances. There is no constitutional right to a prison administrative appeal or
8 grievance system. See *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003); *Mann v.*
9 *Adams*, 855 F.2d 639, 640 (9th Cir. 1988). Defendants who simply showed disrespect to
10 plaintiff's religion will also be dismissed as this fails to state a claim. See *Freeman v.*
11 *Arpaio*, 125 F.3d 732, 738 (9th Cir. 1997) (allegations of verbal harassment and threats fail
12 to state a claim cognizable under 42 U.S.C. § 1983).¹

13 CONCLUSION

14 1. Claims are **DISMISSED** against all defendants except for Muin Daily, Captain
15 Pulson and Deputy Sanchez.

16 2. The clerk shall issue a summons and the United States Marshal shall serve,
17 without prepayment of fees, copies of the complaint with attachments and copies of this
18 order on the following defendants: Muin Daily, Captain Pulson and Deputy Sanchez of the
19 San Francisco County Jail in San Bruno.

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

21 a. No later than sixty days from the date of service, defendant shall file a
22 motion for summary judgment or other dispositive motion. The motion shall be supported
23 by adequate factual documentation and shall conform in all respects to Federal Rule of
24 Civil Procedure 56, and shall include as exhibits all records and incident reports stemming
25 from the events at issue. If defendant is of the opinion that this case cannot be resolved by
26

27 ¹ Plaintiff has filed two prior actions concerning these same allegations that were
28 dismissed without prejudice for plaintiff's failure to update the court with his address. See No. C 12-3427 PJH (PR) and No. C 09-5067 PJH (PR).

1 summary judgment, she shall so inform the court prior to the date her summary judgment
2 motion is due. All papers filed with the court shall be promptly served on the plaintiff.

3 b. At the time the dispositive motion is served, defendant shall also serve, on
4 a separate paper, the appropriate notice or notices required by *Rand v. Rowland*, 154 F.3d
5 952, 953-954 (9th Cir. 1998) (en banc), and *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4
6 (9th Cir. 2003). See *Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012) (*Rand* and
7 *Wyatt* notices must be given at the time motion for summary judgment or motion to dismiss
8 for nonexhaustion is filed, not earlier); *Rand* at 960 (separate paper requirement).

9 c. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the
10 court and served upon defendants no later than thirty days from the date the motion was
11 served upon him. Plaintiff must read the attached page headed "NOTICE -- WARNING,"
12 which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir.
13 1998) (en banc), and *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

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

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

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

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

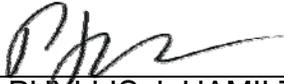
26 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
27 No further court order under Federal Rule of Civil Procedure 30(a)(2) is required before the
28 parties may conduct discovery.

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

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

IT IS SO ORDERED.

Dated: September 5, 2013.



PHYLLIS J. HAMILTON
United States District Judge

G:\PRO-SE\PJH\CR.13\Allen2938.serve.wpd

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

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.