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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

MICHAEL HOLLINS,

Plaintiff,

No. C 13-5035 PJH (PR)

vs.

**ORDER OF SERVICE**

GREG MUNKS, et. al.,

Defendants.

Plaintiff, a detainee incarcerated at Maguire Correctional Facility has filed a pro se civil rights complaint under 42 U.S.C. § 1983.<sup>1</sup> Plaintiff's original complaint was dismissed with leave to amend 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

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<sup>1</sup> Plaintiff has filed fourteen other cases in this court in the last few months, several with overlapping claims.

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 to 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*, 556 U.S. 662,  
13 679 (2009).

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

18 **B. Legal Claims**

19 Plaintiff states that he is Muslim and has been denied the appropriate meal plan.

20 Inmates "have the right to be provided with food sufficient to sustain them in good  
21 health that satisfies the dietary laws of their religion." *McElyea v. Babbitt*, 833 F.2d 196,  
22 198 (9th Cir. 1987). Allegations that prison officials refuse to provide a healthy diet  
23 conforming to sincere religious beliefs states a cognizable claim under § 1983 of denial of  
24 the right to exercise religious practices and beliefs. See *Ward v. Walsh*, 1 F.3d 873, 877  
25 (9th Cir. 1993) (Jewish inmate claiming denial of kosher diet), cert. denied, 510 U.S. 1192  
26 (1994); *McElyea*, 833 F.2d at 198 (same); *Moorish Science Temple, Inc. v. Smith*, 693 F.2d  
27 987, 990 (2d Cir. 1982) (Muslim inmate claiming denial of proper religious diet).

28 Plaintiff states that Chaplain Michael Murray and dietician Chu were responsible for

1 removing him from his Halal religious diet. This claim is sufficient to proceed against these  
2 defendants.<sup>2</sup>

3 **CONCLUSION**

4 1. The clerk shall issue a summons and the United States Marshal shall serve,  
5 without prepayment of fees, copies of the amended complaint (Docket No. 16) with  
6 attachments and copies of this order on the following defendants: Chaplain Michael Murray  
7 and dietician Chu at Maguire Correctional Facility.

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

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

16 b. At the time the dispositive motion is served, defendant shall also serve, on  
17 a separate paper, the appropriate notice or notices required by *Rand v. Rowland*, 154 F.3d  
18 952, 953-954 (9th Cir. 1998) (en banc), and *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4  
19 (9th Cir. 2003). See *Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012) (*Rand* and  
20 *Wyatt* notices must be given at the time motion for summary judgment or motion to dismiss  
21 for nonexhaustion is filed, not earlier); *Rand* at 960 (separate paper requirement).

22 c. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the  
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24 <sup>2</sup> Plaintiff attempts to raise a claim of retaliation against these defendants but fails to  
25 provide sufficient allegations to state a cognizable claim. "Within the prison context, a viable  
26 claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state  
27 actor took some adverse action against an inmate (2) because of (3) that prisoner's protected  
28 conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights,  
and (5) the action did not reasonably advance a legitimate correctional goal." *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote omitted). Plaintiff has failed to demonstrate that he was removed from his diet due to filing grievances, or even that these defendants, a chaplain and dietician, were aware of the grievances.

1 court and served upon defendants no later than thirty days from the date the motion was  
2 served upon him. Plaintiff must read the attached page headed "NOTICE -- WARNING,"  
3 which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir.  
4 1998) (en banc), and *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

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

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

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


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

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

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

25 **IT IS SO ORDERED.**

26 Dated: March 7, 2014.

  
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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.