

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

DAMEIN DION SPRUIELL,
Plaintiff,
v.
LIEUTENANT R. GRAVES, et al.,
Defendants.

Case No. [16-cv-05385-DMR](#) (PR)

**ORDER OF PARTIAL DISMISSAL;
AND SERVING COGNIZABLE CLAIMS**

I. INTRODUCTION

Plaintiff, a state prisoner, filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983 stemming from his incarceration at Pelican Bay State Prison (“PBSP”). Plaintiff has consented to magistrate judge jurisdiction, and this matter has been assigned to the undersigned Magistrate Judge. Dkt. 1 at 6. He has also filed a motion for leave to proceed *in forma pauperis*, which will be granted in a separate written Order.

Venue is proper because the events giving rise to Plaintiff’s claims are alleged to have occurred at PBSP, which is located in this judicial district. *See* 28 U.S.C. § 1391(b).

Plaintiff names the following Defendants from PBSP: Lieutenant R. Graves; Correctional Officer D. Trone; Sergeant R. Navarro; and Warden R. E. Barnes. Plaintiff seeks monetary and punitive damages.

II. STANDARD OF REVIEW

A federal court must engage in a preliminary screening of 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). 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. *See* 28 U.S.C. §1915A(b)(1),(2).

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

5 **III. DISCUSSION**

6 **A. First Amendment and Due Process Claims**

7 On July 7, 2013, Plaintiff received a memorandum labeled, “Pelican Bay State Prison
8 Hunger Strike Informational Sheet—Refusing Food or Drink.” Dkt. 1 at 3.¹ In this
9 memorandum, Plaintiff was informed that refusing food was an inmate’s right and choice. *Id.*
10 From July 7, 2013 through July 10, 2013, Plaintiff “declined to eat the food offered to him
11 because PBSP officials issued [him] a paper saying that it was his right to refuse to eat” *Id.*
12 at 15.

13 On July 16, 2013, Defendant Navarro “retaliated against this plaintiff for exercising this
14 right to refuse food or drinks by issuing this plaintiff a rules violation report (RVR) Log no. C13-
15 07-0005” *Id.* at 3. Plaintiff claims that Defendant Navarro’s disciplinary action was an
16 adverse action taken because of Plaintiff exercised his right to free speech by participating in a
17 hunger strike, i.e., a protected conduct. Liberally construed, Plaintiff states a cognizable claim of
18 retaliation against Defendant Navarro.

19 **B. Due Process Claim**

20 On July 17, 2013, Defendant Trone “issue[d] this plaintiff the RVR that [Defendant]
21 Navarro had reported” *Id.* at 4. Defendant Trone then informed Plaintiff that he was going to
22 serve as Plaintiff’s “Investigative Employee (IE),” to which Plaintiff had no objection. *Id.*
23 Plaintiff asked Defendant Trone for a copy of “Operational Procedure 228 (OP 228) that was
24 utilize[d] inside the report against Plaintiff because Plaintiff never heard of it or knew what it said
25 in order to prepare a defense against the report at the disciplinary hearing.” *Id.* at 4-5.

26 On July 20, 2013, Defendant Graves served as the Senior Hearing Officer at Plaintiff’s
27

28 ¹ Page number citations refer to those assigned by the court’s electronic case management filing system and not those assigned by Plaintiff.

1 disciplinary hearing. *Id.* at 7. Plaintiff informed Defendant Graves that he was “not prepared to
2 proceed with the disciplinary hearing because [Defendant] Trone still ha[d] not c[o]me back with a
3 copy of the OP 228.” *Id.* Defendant Graves refused to give Plaintiff a copy of OP 228 and instead
4 continued with the hearing. *Id.* Plaintiff was found guilty of the RVR. *Id.* Plaintiff claims that
5 Defendants Trone’s and Graves’s actions violated his due process rights because he was found
6 guilty at a disciplinary hearing in which he was denied the opportunity to “review evidence” and
7 “prepare an adequate defense.” *Id.* at 5, 7. The record shows that the guilty finding initially
8 resulted in 90 days loss of credits. *Id.* at 10. However, on July 26, 2016, Plaintiff’s state superior
9 court petition for a writ of habeas corpus (relating to this guilty finding) was granted. *Id.* Thus,
10 Plaintiff has since had his credits restored and disciplinary sanctions expunged. *Id.* Liberally
11 construed, Plaintiff states a cognizable due process claim against Defendants Trone and Graves.

12 **C. Supervisory Liability Claim**

13 Plaintiff sues Defendant Barnes in his supervisory capacity. Plaintiff does not allege facts
14 demonstrating that Defendant Barnes violated his federal rights, but seems to claim Defendant
15 Barnes is liable based on the conduct of his subordinates, Defendants Navarro, Trone, and Graves.
16 There is, however, no respondeat superior liability under section 1983 solely because a defendant
17 is responsible for the actions or omissions of another. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th
18 Cir. 1989). A supervisor generally “is only liable for constitutional violations of his subordinates
19 if the supervisor participated in or directed the violations, or knew of the violations and failed to
20 act to prevent them.” *Id.* A supervisor may also be held liable if he or she implemented “a policy
21 so deficient that the policy itself is a repudiation of constitutional rights and is the moving force of
22 the constitutional violation.” *Redman v. County of San Diego*, 942 F.2d 1435, 1446 (9th Cir.
23 1991) (en banc). Plaintiff’s claim against Defendant Barnes is therefore DISMISSED without
24 prejudice.

25 **IV. CONCLUSION**

26 For the foregoing reasons, the court orders as follows:

27 1. Plaintiff’s claim against Defendant Barnes is DISMISSED without prejudice. All
28 remaining claims may proceed, as explained above.

1 2. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of
2 Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint
3 and all attachments thereto (dkt. 1), a Magistrate Judge jurisdiction consent form, and a copy of
4 this Order to the following Defendants at PBSP: **Lieutenant R. Graves; Correctional Officer D.
5 Trone; and Sergeant R. Navarro.**

6 The Clerk shall also mail a copy of the complaint and a copy of this Order to the State
7 Attorney General's Office in San Francisco. Additionally, the Clerk shall mail a copy of this
8 Order to Plaintiff.

9 3. Defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure
10 requires them to cooperate in saving unnecessary costs of service of the summons and complaint.
11 Pursuant to Rule 4, if Defendants, after being notified of this action and asked by the court, on
12 behalf of Plaintiff, to waive service of the summons, fail to do so, they will be required to bear the
13 cost of such service unless good cause be shown for their failure to sign and return the waiver
14 form. If service is waived, this action will proceed as if Defendants had been served on the date
15 that the waiver is filed, except that pursuant to Rule 12(a)(1)(B), Defendants will not be required
16 to serve and file an answer before **sixty (60) days** from the date on which the request for waiver
17 was sent. (This allows a longer time to respond than would be required if formal service of
18 summons is necessary.) Defendants are asked to read the statement set forth at the foot of the
19 waiver form that more completely describes the duties of the parties with regard to waiver of
20 service of the summons. If service is waived after the date provided in the Notice but before
21 Defendants have been personally served, the Answer shall be due **sixty (60) days** from the date on
22 which the request for waiver was sent or **twenty (20) days** from the date the waiver form is filed,
23 whichever is later. **Defendants shall also respond to the Notice of Assignment of Prisoner
24 Case to a United States Magistrate Judge for Trial by filing a consent/declination form on
25 the date the Answer is due.**

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

28 a. No later than **sixty (60) days** from the date their answer is due, Defendants

1 shall file a motion for summary judgment or other dispositive motion. The motion must be
2 supported by adequate factual documentation, must conform in all respects to Federal Rule of
3 Civil Procedure 56, and must include as exhibits all records and incident reports stemming from
4 the events at issue. A motion for summary judgment also must be accompanied by a *Rand*² notice
5 so that Plaintiff will have fair, timely and adequate notice of what is required of him in order to
6 oppose the motion. *Woods v. Carey*, 684 F.3d 934, 935 (9th Cir. 2012) (notice requirement set out
7 in *Rand* must be served concurrently with motion for summary judgment). A motion to dismiss
8 for failure to exhaust available administrative remedies must be accompanied by a similar notice.
9 However, the court notes that under the new law of the circuit, in the rare event that a failure to
10 exhaust is clear on the face of the complaint, Defendants may move for dismissal under Rule
11 12(b)(6) as opposed to the previous practice of moving under an unenumerated Rule 12(b) motion.
12 *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (en banc) (overruling *Wyatt v. Terhune*, 315
13 F.3d 1108, 1119 (9th Cir. 2003), which held that failure to exhaust available administrative
14 remedies under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), should be raised by a
15 defendant as an unenumerated Rule 12(b) motion). Otherwise if a failure to exhaust is not clear on
16 the face of the complaint, Defendants must produce evidence proving failure to exhaust in a
17 motion for summary judgment under Rule 56. *Id.* If undisputed evidence viewed in the light most
18 favorable to Plaintiff shows a failure to exhaust, Defendants are entitled to summary judgment
19 under Rule 56. *Id.* But if material facts are disputed, summary judgment should be denied and the
20 district judge rather than a jury should determine the facts in a preliminary proceeding. *Id.* at
21 1168.

22 If Defendants are of the opinion that this case cannot be resolved by summary judgment,
23 they shall so inform the court prior to the date the summary judgment motion is due. All papers
24 filed with the court shall be promptly served on Plaintiff.

25 b. Plaintiff's opposition to the dispositive motion shall be filed with the court
26 and served on Defendants no later than **twenty-eight (28) days** after the date on which
27

28 ² *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998).

1 Defendants' motion is filed.

2 c. Plaintiff is advised that a motion for summary judgment under Rule 56 of
3 the Federal Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you
4 must do in order to oppose a motion for summary judgment. Generally, summary judgment must
5 be granted when there is no genuine issue of material fact—that is, if there is no real dispute about
6 any fact that would affect the result of your case, the party who asked for summary judgment is
7 entitled to judgment as a matter of law, which will end your case. When a party you are suing
8 makes a motion for summary judgment that is properly supported by declarations (or other sworn
9 testimony), you cannot simply rely on what your complaint says. Instead, you must set out
10 specific facts in declarations, depositions, answers to interrogatories, or authenticated documents,
11 as provided in Rule 56(e), that contradicts the facts shown in the defendant's declarations and
12 documents and show that there is a genuine issue of material fact for trial. If you do not submit
13 your own evidence in opposition, summary judgment, if appropriate, may be entered against you.
14 If summary judgment is granted, your case will be dismissed and there will be no trial. *Rand*, 154
15 F.3d at 962-63.

16 Plaintiff also is advised that—in the rare event that Defendants argue that the failure to
17 exhaust is clear on the face of the complaint—a motion to dismiss for failure to exhaust available
18 administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your case, albeit without
19 prejudice. To avoid dismissal, you have the right to present any evidence to show that you did
20 exhaust your available administrative remedies before coming to federal court. Such evidence
21 may include: (1) declarations, which are statements signed under penalty of perjury by you or
22 others who have personal knowledge of relevant matters; (2) authenticated documents—
23 documents accompanied by a declaration showing where they came from and why they are
24 authentic, or other sworn papers such as answers to interrogatories or depositions; (3) statements
25 in your complaint insofar as they were made under penalty of perjury and they show that you have
26 personal knowledge of the matters state therein. As mentioned above, in considering a motion to
27 dismiss for failure to exhaust under Rule 12(b)(6) or failure to exhaust in a summary judgment
28 motion under Rule 56, the district judge may hold a preliminary proceeding and decide disputed

1 issues of fact with regard to this portion of the case. *Albino*, 747 F.3d at 1168.

2 (The notices above do not excuse Defendants' obligation to serve similar notices again
3 concurrently with motions to dismiss for failure to exhaust available administrative remedies and
4 motions for summary judgment. *Woods*, 684 F.3d at 935.)

5 d. Defendants shall file a reply brief no later than **fourteen (14) days** after the
6 date Plaintiff's opposition is filed.

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

9 5. Discovery may be taken in this action in accordance with the Federal Rules of Civil
10 Procedure. Leave of the court pursuant to Rule 30(a)(2) is hereby granted to Defendants to depose
11 Plaintiff and any other necessary witnesses confined in prison.

12 6. All communications by Plaintiff with the court must be served on Defendants or
13 their counsel, once counsel has been designated, by mailing a true copy of the document to them.

14 7. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the court
15 informed of any change of address and must comply with the court's orders in a timely fashion.
16 Pursuant to Northern District Local Rule 3-11 a party proceeding *pro se* whose address changes
17 while an action is pending must promptly file a notice of change of address specifying the new
18 address. *See* L.R. 3-11(a). The court may dismiss without prejudice a complaint when: (1) mail
19 directed to the *pro se* party by the court has been returned to the court as not deliverable, and
20 (2) the court fails to receive within sixty days of this return a written communication from the *pro*
21 *se* party indicating a current address. *See* L.R. 3-11(b).

22 8. Upon a showing of good cause, requests for a reasonable extension of time will be
23 granted provided they are filed on or before the deadline they seek to extend.

24 IT IS SO ORDERED.

25 Dated: April 6, 2017



26
27 DONNA M. RYU
United States Magistrate Judge

28

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 DAMEIN DION SPRUIELL,
4 Plaintiff,
5
6 v.
7 R. GRAVES, et al.,
8 Defendants.

Case No. [4:16-cv-05385-DMR](#)

CERTIFICATE OF SERVICE


9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on April 6, 2017, I SERVED a true and correct copy(ies) of the attached, by placing
13 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.

16
17 Damein Dion Spruiell ID: T-70693
18 Pelican Bay State Prison
19 P.O. Box 7500
20 Crescent City, CA 95531

Dated: April 6, 2017

21
22 Susan Y. Soong
23 Clerk, United States District Court

24
25 
26 By: _____
27 Ivy Lerma Garcia, Deputy Clerk to the
28 Honorable DONNA M. RYU