

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ANTHONY CARTER,
Plaintiff,
v.
RALPH R. SHELTON, et al.,
Defendants.

Case No. [18-cv-02035-PJH](#)**ORDER OF SERVICE**

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION**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 omitted). Although in order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. The United States Supreme Court has recently explained the “plausible on its face” standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

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 deprivation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

LEGAL CLAIMS

Plaintiff alleges that defendants falsely labeled him as a sex offender which led to his assault by other inmates.

The Eighth Amendment requires that prison officials take reasonable measures to guarantee the safety of prisoners. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). In particular, prison officials have a duty to protect prisoners from violence at the hands of other prisoners. *Id.* at 833; *Cortez v. Skol*, 776 F. 3d 1046, 1050 (9th Cir. 2015); *Hearns v. Terhune*, 413 F.3d 1036, 1040 (9th Cir. 2005). The failure of prison officials to protect inmates from attacks by other inmates or from dangerous conditions at the prison violates the Eighth Amendment when two requirements are met: (1) the deprivation alleged is, objectively, sufficiently serious; and (2) the prison official is, subjectively, deliberately indifferent to inmate health or safety. *Farmer*, 511 U.S. at 834. A prison official is

1 deliberately indifferent if he knows of and disregards an excessive risk to inmate health or
2 safety by failing to take reasonable steps to abate it. *Id.* at 837.

3 Allegations in a pro se complaint sufficient to raise an inference that the named
4 prison officials knew that plaintiff faced a substantial risk of serious harm and disregarded
5 that risk by failing to take reasonable measures to abate it state a failure-to-protect claim.
6 See *Hearns*, 413 F.3d at 1041-42 (citing *Farmer*, 511 U.S. at 847).

7 Regardless of mandatory regulatory language, the classification of an inmate as a
8 sex offender may be the type of atypical and significant hardship on the inmate in relation
9 to the ordinary incidents of prison life that the Supreme Court held created a protected
10 liberty interest in *Sandin v. Conner*, 515 U.S. 472 (1995). See *Neal*, 131 F.3d 818, 827-
11 30 (9th Cir. 1997). While such a liberty interest is not created merely by the requirement
12 that sex offenders participate in a specified treatment program, see *id.* at 830, in *Neal* the
13 Ninth Circuit found that "the stigmatizing consequences of the attachment of the 'sex
14 offender' label coupled with the subjection of the targeted inmate to a mandatory
15 treatment program whose successful completion is a precondition for parole eligibility
16 create the kind of deprivations of liberty that require procedural protections," *id.* Under
17 these circumstances, inmates are entitled to procedural due process before being
18 classified as sex offenders. See *id.* at 830-31 (inmates entitled to procedural protections
19 of *Wolff v. McDonnell*, 418 U.S. 539 (1974), including notice of reasons for classification
20 as sex offender and a hearing at which the inmate may call witnesses and present
21 documentary evidence in his defense). An inmate who has been convicted of a sex
22 crime in a prior adversarial setting, whether as the result of a bench trial, jury trial, or plea
23 agreement, has received the minimum protections of due process. See *id.* at 831.

24 Plaintiff was found guilty of a rules violation for indecent exposure. As a result he
25 was placed in restrictive housing, had to wear an indecent exposure suit, and a sign was
26 paced on his cell regarding the indecent exposure. A different inmate was later assaulted
27 because he had an indecent exposure sign on his cell. Several weeks later plaintiff was
28 assaulted by the same inmates how had assaulted the other inmate with a sign on his

1 cell. Plaintiff suffered injuries as a result of the incident. Plaintiff has presented a
2 cognizable claim for failure to protect under the Eighth Amendment and related state law.
3 While it is not clear if plaintiff was classified as a sex offender as opposed to just having a
4 sign on his cell indicating he was guilty of indecent exposure, liberally construed he also
5 presents a due process violation.¹

6 CONCLUSION

7 1. The clerk shall issue a summons and the United States Marshal shall serve,
8 without prepayment of fees, copies of the complaint with attachments and copies of this
9 order on the following defendants at San Quentin State Prison: Correctional Lieutenant
10 Ralph R. Shelton and Correctional Officer Fitsimmons. All other defendants are
11 dismissed with prejudice from this action.

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

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

21 b. At the time the dispositive motion is served, defendants shall also serve,
22 on a separate paper, the appropriate notice or notices required by *Rand v. Rowland*, 154
23 F.3d 952, 953-954 (9th Cir. 1998) (en banc), and *Wyatt v. Terhune*, 315 F.3d 1108, 1120
24 n. 4 (9th Cir. 2003). See *Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012) (*Rand*
25 and *Wyatt* notices must be given at the time motion for summary judgment or motion to
26

27 ¹ Plaintiff also names the prison as a defendant. Plaintiff cannot bring his claim against
28 the prison pursuant to the Eleventh Amendment. Nor can plaintiff bring this claim
pursuant to *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 690 (1978), because the
prison is not a local municipality. This defendant is dismissed.

1 dismiss for nonexhaustion is filed, not earlier); *Rand* at 960 (separate paper requirement).

2 c. Plaintiff's opposition to the dispositive motion, if any, shall be filed with
3 the court and served upon defendants no later than thirty days from the date the motion
4 was served upon him. Plaintiff must read the attached page headed "NOTICE --
5 WARNING," which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-
6 954 (9th Cir. 1998) (en banc), and *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir.
7 1988).

8 If defendants file a motion for summary judgment claiming that plaintiff failed to
9 exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a),
10 plaintiff should take note of the attached page headed "NOTICE -- WARNING
11 (EXHAUSTION)," which is provided to him as required by *Wyatt v. Terhune*, 315 F.3d
12 1108, 1120 n. 4 (9th Cir. 2003).

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

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

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

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

23 5. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the court
24 informed of any change of address by filing a separate paper with the clerk headed
25 "Notice of Change of Address." He also must comply with the court's orders in a timely
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27
28

1 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
2 pursuant to Federal Rule of Civil Procedure 41(b).

3 **IT IS SO ORDERED.**

4 Dated: June 26, 2018

A handwritten signature in black ink, appearing to read 'Phyllis J. Hamilton', written over a horizontal line.

PHYLLIS J. HAMILTON
United States District Judge

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 a motion for summary judgment 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 for summary judgment for failure to exhaust and it is granted, your case will be dismissed and there will be no trial.

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5 NORTHERN DISTRICT OF CALIFORNIA
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7 MICHAEL ANTHONY CARTER,
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11 Defendants.

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CERTIFICATE OF SERVICE

12
13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
14 District Court, Northern District of California.

15 That on 6/26/2018, I SERVED a true and correct copy(ies) of the attached, by placing said
16 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
17 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
18 located in the Clerk's office.

19 Michael Anthony Carter ID: C-50181
20 Duel Vocational Institution D-239
21 PO Box 600
22 Tracy, CA 94579

23 Dated: 6/26/2018

24 Susan Y. Soong
25 Clerk, United States District Court

26 By: Kelly Collins
27 Kelly Collins, Deputy Clerk to the
28 Honorable PHYLLIS J. HAMILTON