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NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

REOMAN R. C. COLLINS,)	No. C 11-00442 JF (PR)
)	
Plaintiff,)	ORDER OF PARTIAL DISMISSAL
)	AND OF SERVICE; DIRECTING
vs.)	DEFENDANTS TO FILE DISPOSITIVE
)	MOTION OR NOTICE REGARDING
ALAMEDA COUNTY SHERIFFS)	SUCH MOTION; INSTRUCTIONS TO
DEPT., et al.,)	CLERK
)	
Defendants.)	
_____)	

Plaintiff, a prisoner at the Santa Rita Jail in Dublin, California, filed the instant civil rights action in pro se pursuant to 42 U.S.C. § 1983 against jail officials for unconstitutional acts. Plaintiff’s motion for leave to proceed in forma pauperis, (Docket No. 2), will be granted in a separate written order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in 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). In its review, the court must identify

1 any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a
2 claim upon which relief may be granted or seek monetary relief from a defendant who is
3 immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be
4 liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
5 1988).

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

10 **B. Plaintiff's Claims**

11 Plaintiff alleges that on October 29, 2010, Defendant J. Shaves viciously attacked
12 him inside his isolation cell. (Compl. at 3.) Plaintiff claims that Shaves beat him in the
13 head and body, such that he had to be seen by a doctor. (Id.) Plaintiff also claims that
14 Shaves placed him in administrative segregation without due process. Liberally
15 construed, these claims are cognizable under § 1983.

16 Plaintiff claims that Mr. A. Hurn, the “Warden of Santa Rita Jail,” is liable for the
17 attack by Shaves because he “should have know” about the type of deputies he has
18 working at the jail. It appears that Plaintiff is attempting to allege supervisor liability. A
19 supervisor may be liable under section 1983 upon a showing of (1) personal involvement
20 in the constitutional deprivation or (2) a sufficient causal connection between the
21 supervisor’s wrongful conduct and the constitutional violation. Redman v. County of San
22 Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc) (citation omitted). A supervisor
23 therefore generally “is only liable for constitutional violations of his subordinates if the
24 supervisor participated in or directed the violations, or knew of the violations and failed
25 to act to prevent them.” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). However,
26 Plaintiff fails to allege that Shaves had a known potential for violence which Hurn knew
27 or should have known and therefore required to protect prisoners, like Plaintiff, from
28 potential attacks. Without any evidence to support this claim, Plaintiff’s allegations

1 against Hurn are conclusory and fail to state a claim. Accordingly, this claim against
2 Hurn is DISMISSED for failure to state a claim.

3 Plaintiff claims that Alameda County (the “County”) “should be aware of the
4 police/deputy’s conduct” and they “should have done something a long time ago in order
5 to correct... the police brutality against their inmates.” (Compl. Attach. at 3.) To impose
6 municipal liability under § 1983 for a violation of constitutional rights, a plaintiff must
7 show: (1) that the plaintiff possessed a constitutional right of which he or she was
8 deprived; (2) that the municipality had a policy; (3) that this policy amounts to deliberate
9 indifference to the plaintiff’s constitutional rights; and (4) that the policy is the moving
10 force behind the constitutional violation. See Plumeau v. School Dist. #40 County of
11 Yamhill, 130 F.3d 432, 438 (9th Cir. 1997). Here, Plaintiff fails to allege that the County
12 violated his rights by maintaining a policy and that the policy was the moving force
13 behind the violation. Similar to his allegations against Hurn, Plaintiff’s allegations
14 against the County are otherwise conclusory and fail to state a claim. Accordingly, this
15 claim against Alameda County is DISMISSED for failure to state a claim.

16 17 CONCLUSION

18 For the reasons stated above, the Court orders as follows:

19 1. The claims against Defendants Hurn and Alameda County are DISMISSED
20 for failure to state a claim. The Clerk shall terminate these Defendants from this action.

21 2. The Clerk of the Court shall issue summons and the United States Marshal
22 shall serve, without prepayment of fees, a copy of the complaint in this matter, all
23 attachments thereto, and a copy of this order upon **Defendant Deputy Joshua Shaves** at
24 the **Santa Rita Jail in Dublin, California**. The Clerk shall also mail courtesy copies of
25 the Complaint and this order to the California Attorney General’s Office.

26 3. No later than **sixty (60) days** from the date of this order, Defendant shall
27 file a motion for summary judgment or other dispositive motion with respect to the claims
28 in the complaint found to be cognizable above, or, within such time, notify the Court that

1 Defendant is of the opinion that this case cannot be resolved by such a motion.

2 a. If Defendant elects to file a motion to dismiss on the grounds that
3 Plaintiff failed to exhaust his available administrative remedies as required by 42 U.S.C.
4 § 1997e(a), Defendant shall do so in an unenumerated Rule 12(b) motion pursuant to
5 Wyatt v. Terhune, 315 F.3d 1108, 1119-20 (9th Cir. 2003), cert. denied Alameida v.
6 Terhune, 540 U.S. 810 (2003).

7 b. Any motion for summary judgment shall be supported by adequate
8 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of
9 Civil Procedure. **Defendant is advised that summary judgment cannot be granted,**
10 **nor qualified immunity found, if material facts are in dispute. If Defendant is of the**
11 **opinion that this case cannot be resolved by summary judgment, he shall so inform**
12 **the Court prior to the date the summary judgment motion is due.**

13 4. Plaintiff's opposition to the dispositive motion shall be filed with the Court
14 and served on Defendant no later than **thirty (30) days** from the date Defendant's motion
15 is filed.

16 a. In the event Defendant files an unenumerated motion to dismiss
17 under Rule 12(b), Plaintiff is hereby cautioned as follows:¹

18 The Defendants have made a motion to dismiss pursuant to Rule
19 12(b) of the Federal Rules of Civil Procedure, on the ground you have not
20 exhausted your administrative remedies. The motion will, if granted, result
21 in the dismissal of your case. When a party you are suing makes a motion
22 to dismiss for failure to exhaust, and that motion is properly supported by
23 declarations (or other sworn testimony) and/or documents, you may not
24 simply rely on what your complaint says. Instead, you must set out specific
25 facts in declarations, depositions, answers to interrogatories, or documents,
26 that contradict the facts shown in the Defendant's declarations and
27 documents and show that you have in fact exhausted your claims. If you do
28 not submit your own evidence in opposition, the motion to dismiss, if
appropriate, may be granted and the case dismissed.

b. In the event Defendant files a motion for summary judgment, the

¹ The following notice is adapted from the summary judgment notice to be given to pro se prisoners as set forth in Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). See Wyatt v. Terhune, 315 F.3d at 1120 n.14.

1 Ninth Circuit has held that the following notice should be given to Plaintiff:

2 The defendants have made a motion for summary judgment by
3 which they seek to have your case dismissed. A motion for summary
4 judgment under Rule 56 of the Federal Rules of Civil Procedure will, if
5 granted, end your case.

6 Rule 56 tells you what you must do in order to oppose a motion for
7 summary judgment. Generally, summary judgment must be granted when
8 there is no genuine issue of material fact--that is, if there is no real dispute
9 about any fact that would affect the result of your case, the party who asked
10 for summary judgment is entitled to judgment as a matter of law, which will
11 end your case. When a party you are suing makes a motion for summary
12 judgment that is properly supported by declarations (or other sworn
13 testimony), you cannot simply rely on what your complaint says. Instead,
14 you must set out specific facts in declarations, depositions, answers to
15 interrogatories, or authenticated documents, as provided in Rule 56(e), that
16 contradict the facts shown in the defendants' declarations and documents
17 and show that there is a genuine issue of material fact for trial. If you do
18 not submit your own evidence in opposition, summary judgment, if
19 appropriate, may be entered against you. If summary judgment is granted
20 in favor of defendants, your case will be dismissed and there will be no
21 trial.

22 See Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc).

23 Plaintiff is advised to read Rule 56 of the Federal Rules of Civil Procedure and
24 Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (holding party opposing summary judgment
25 must come forward with evidence showing triable issues of material fact on every
26 essential element of his claim). Plaintiff is cautioned that failure to file an opposition to
27 Defendant's motion for summary judgment may be deemed to be a consent by Plaintiff to
28 the granting of the motion, and granting of judgment against plaintiff without a trial. See
Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (per curiam); Brydges v. Lewis, 18
F.3d 651, 653 (9th Cir. 1994).

5. Defendant shall file a reply brief no later than **fifteen (15) days** after
Plaintiff's opposition is filed.

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

7. All communications by the Plaintiff with the Court must be served on
Defendant, or Defendant's counsel once counsel has been designated, by mailing a true
copy of the document to Defendant or Defendant's counsel.

1 8. Discovery may be taken in accordance with the Federal Rules of Civil
2 Procedure. No further Court order is required before the parties may conduct discovery.

3 9. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the
4 Court informed of any change of address and must comply with the Court's orders in a
5 timely fashion. Failure to do so may result in the dismissal of this action for failure to
6 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

7 IT IS SO ORDERED.

8 DATED: 4/22/11
9 _____


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11 JEREMY FOGEL
12 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

REOMAN COLLINS,
Plaintiff,

Case Number: CV11-00442 JF

CERTIFICATE OF SERVICE

v.

JOSHUA SHAVES, et al.,
Defendants.

_____/

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

That on 5/2/11, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Reoman R.C. Collins AXA273
Santa Rita Jail
5325 Broder Blvd
Dublin, CA 94568

Dated: 5/2/11

Richard W. Wieking, Clerk