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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TROY J. ANDERSON,)	No. C 13-0307 LHK (PR)
)	
Plaintiff,)	ORDER OF SERVICE;
)	DIRECTING DEFENDANTS TO
v.)	FILE DISPOSITIVE MOTION OR
)	NOTICE THAT SUCH MOTION IS
COUNTY BOARD OF SUPERVISORS)	UNWARRANTED
FOR CONTRA COSTA JAIL, et al.,)	
)	
Defendants.)	
)	

Plaintiff, a pre-trial detainee proceeding *pro se*, filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983. For the reasons stated below, the Court serves the amended complaint on named Defendants.

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 any cognizable claims and dismiss any claims that 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 id.* § 1915A(b)(1), (2). *Pro se* pleadings must, however, be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

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

5 B. Plaintiff's Claims

6 Plaintiff's original complaint was a list of general complaints that Plaintiff had since
7 being transferred from minimum security housing in January 2011, to administrative segregation
8 at the Martinez Detention Facility. It was not clear what, if any, cognizable claims Plaintiff was
9 asserting. As best the Court could tell, Plaintiff alleged that his housing was in error, that his
10 medical needs were not met, and that he was retaliated against, among other things. The Court
11 explained to Plaintiff that his complaint included unrelated claims and warned Plaintiff that if he
12 asserted improperly joined claims again, the Court would dismiss them. The Court further
13 warned Plaintiff that the complaint did not proffer enough facts to raise a right to relief above the
14 speculative level and was too conclusory. The Court directed Plaintiff to specifically state what
15 happened, when it happened, what each Defendant did, and how those actions or inactions rise to
16 the level of a federal constitutional violation.

17 Plaintiff's amended complaint is an improvement, but still raises claims ranging from
18 deliberate indifference to medical needs, to a failure to protect, to a violation of his right to
19 receive mail. Further, Plaintiff does not link many of his allegations to named Defendants.
20 Because the Court can discern one claim from Plaintiff's amended complaint, and has given
21 Plaintiff the opportunity to only include properly joined claims in his amended complaint,
22 instead of dismissing the entire action, the Court will dismiss all claims raised in Plaintiff's
23 amended complaint except for Plaintiff's claim that Defendants were deliberately indifferent to
24 his serious medical needs.

25 Specifically, Plaintiff alleges that sometime in 2011, Plaintiff suffered a fractured jaw
26 and was taken to the County Clinic. When he returned to Martinez Detention Facility, Plaintiff
27 was not given any pain medication or his liquid diet. Defendants Clawson, Sibbitt, and Vanscoy
28 ignored him, and Nurse Jennifer did not give Plaintiff time to swallow. Defendants Dr. McBride

1 and Dr. Faivre refused to tend to Plaintiff and falsely denied to the facility staff that Plaintiff had
2 any surgery scheduled to fix his jaw. Liberally construed, Plaintiff has stated a cognizable claim
3 that Defendants were deliberately indifferent to his serious medical needs.

4 **CONCLUSION**

5 For the foregoing reasons, the court hereby orders as follows:

6 1. With the exception of Plaintiff's deliberate indifference to medical needs claim,
7 Plaintiff's remaining claims are dismissed without prejudice to re-filing each properly joined
8 claim in a separate and new action. Defendants County Board of Supervisors, David O.
9 Livingston, Mark A. Peterson, Dr. Walker, David Briggs, and Joyce C. Sasse are DISMISSED
10 without prejudice.

11 2. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of
12 Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint
13 and all attachments thereto (docket no. 1), and a copy of this Order to **Clawson, Sibbitt,**
14 **Vanscoy, Nurse Jennifer, Dr. McBride, and Dr. Faivre at Martinez Detention Facility.**

15 The Clerk of the Court shall also mail a courtesy copy of the complaint and a copy of this
16 Order to the law firm of McNamara Ney Beatty Slattery Borges and Ambacher, 1211 Newell
17 Avenue, Walnut Creek, CA 94596. Additionally, the Clerk shall mail a copy of this Order to
18 Plaintiff.

19 3. Defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure
20 requires them to cooperate in saving unnecessary costs of service of the summons and complaint.
21 Pursuant to Rule 4, if Defendants, after being notified of this action and asked by the Court, on
22 behalf of Plaintiff, to waive service of the summons, fail to do so, they will be required to bear
23 the cost of such service unless good cause be shown for their failure to sign and return the waiver
24 form. If service is waived, this action will proceed as if Defendants had been served on the date
25 that the waiver is filed, except that pursuant to Rule 12(a)(1)(B), Defendants will not be required
26 to serve and file an answer before **sixty (60) days** from the date on which the request for waiver
27 was sent. (This allows a longer time to respond than would be required if formal service of
28 summons is necessary.) Defendants are asked to read the statement set forth at the bottom of the

1 waiver form that more completely describes the duties of the parties with regard to waiver of
2 service of the summons. If service is waived after the date provided in the Notice but before
3 Defendants have been personally served, the Answer shall be due **sixty (60) days** from the date
4 on which the request for waiver was sent or **twenty (20) days** from the date the waiver form is
5 filed, whichever is later.

6 4. No later than **ninety (90) days** from the date of this Order, Defendants shall file a
7 motion for summary judgment or other dispositive motion with respect to the cognizable claims
8 in the complaint.

9 a. If Defendants elect to file a motion to dismiss on the grounds that Plaintiff
10 failed to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a),
11 Defendants shall do so in an unenumerated Rule 12(b) motion pursuant to *Wyatt v. Terhune*, 315
12 F.3d 1108, 1119-20 (9th Cir. 2003).

13 b. Any motion for summary judgment shall be supported by adequate factual
14 documentation and shall conform in all respects to Rule 56 of the Federal Rules of Civil
15 Procedure. **Defendants are advised that summary judgment cannot be granted, nor**
16 **qualified immunity found, if material facts are in dispute. If Defendants are of the opinion**
17 **that this case cannot be resolved by summary judgment, they shall so inform the Court**
18 **prior to the date the summary judgment motion is due.**

19 5. Plaintiff's opposition to the dispositive motion shall be filed with the Court and
20 served on Defendants no later than **twenty-eight (28) days** from the date Defendants' motion is
21 filed. Plaintiff is advised to read Rule 56 of the Federal Rules of Civil Procedure and
22 *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (holding party opposing summary judgment must
23 come forward with evidence showing triable issues of material fact on every essential element of
24 his claim).

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

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

