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

SAUL PELAYO,)	No. C 13-3618 RMW (PR)
)	
Plaintiff,)	ORDER OF SERVICE; DIRECTING
)	DEFENDANT TO FILE
v.)	DISPOSITIVE MOTION OR
)	NOTICE REGARDING SUCH
G. HERNANDEZ,)	MOTION
)	
Defendant.)	

Plaintiff, a state prisoner proceeding pro se, filed an amended civil rights complaint against Correctional Officer G. Hernandez, a prison official at the Correctional Training Facility, pursuant to 42 U.S.C. § 1983. For the reasons below, the court orders service upon defendant.

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* 28 U.S.C. § 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 B. Legal Claim

2 Plaintiff claims that Correctional Officer G. Hernandez substantially burdened him from
3 practicing Christianity. When plaintiff attempted to explain that his religious faith required him
4 to have his bible with him at all times, G. Hernandez began to harass and retaliate against him.
5 Liberally construed, plaintiff's amended complaint states a cognizable claim of a violation of the
6 Free Exercise Clause, Religious Land Use and Institutionalized Persons Act, and the First
7 Amendment right against retaliation.

8 **CONCLUSION**

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

10 1. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of
11 Service of Summons, two copies of the Waiver of Service of Summons, a copy of the amended
12 complaint and all attachments thereto (docket no. 13), and a copy of this Order to **Correctional**
13 **Officer G. Hernandez at CTF**. The Clerk of the Court shall also mail a courtesy copy of the
14 complaint and a copy of this Order to the California Attorney General's Office. Additionally,
15 the Clerk shall mail a copy of this Order to plaintiff.

16 2. Defendant is cautioned that Rule 4 of the Federal Rules of Civil Procedure
17 requires him to cooperate in saving unnecessary costs of service of the summons and complaint.
18 Pursuant to Rule 4, if defendant, after being notified of this action and asked by the court, on
19 behalf of plaintiff, to waive service of the summons, fails to do so, he will be required to bear the
20 cost of such service unless good cause is shown for his failure to sign and return the waiver
21 form. If service is waived, this action will proceed as if defendant had been served on the date
22 that the waiver is filed, except that pursuant to Rule 12(a)(1)(B), defendant will not be required
23 to serve and file an answer before **sixty (60) days** from the date on which the request for waiver
24 was sent. If service is waived after the date provided in the Notice but before defendant has been
25 personally served, the Answer shall be due **sixty (60) days** from the date on which the request
26 for waiver was sent or **twenty (20) days** from the date the waiver form is filed, whichever is
27 later.

28 3. No later than **sixty (60) days** from the date the waiver is sent, defendant shall file

1 a motion for summary judgment or other dispositive motion with respect to the cognizable claim
2 in the complaint.

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

9 4. Plaintiff's opposition to the dispositive motion shall be filed with the court and
10 served on defendant no later than **twenty-eight (28) days** from the date defendant's motion is
11 filed. Plaintiff is advised to read Rule 56 of the Federal Rules of Civil Procedure and Celotex
12 Corp. v. Catrett, 477 U.S. 317 (1986).

13 5. Defendant shall file a reply brief no later than **fourteen (14) days** after plaintiff's
14 opposition is filed.

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

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

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

22 9. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the court
23 and all parties informed of any change of address and must comply with the court's orders in a
24 timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
25 pursuant to Federal Rule of Civil Procedure 41(b).

26 IT IS SO ORDERED.

27 DATED: _____

28 
RONALD M. WHYTE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SAUL PELAYO,
Plaintiff,

Case Number: CV13-03618 RMW

CERTIFICATE OF SERVICE

v.

G. HERNANDEZ,
Defendant.

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 August 21, 2014, 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.

Saul Pelayo P-61090
Correctional Training Facility
CW-304UP
P.O. Box 689
Soledad, CA 93960

Dated: August 21, 2014

Richard W. Wieking, Clerk
By: Jackie Lynn Garcia, Deputy Clerk