

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LAMONT LOMACK,  
Plaintiff,  
  
v.  
  
N. HARRIS, et al.,  
Defendants.

Case No. 16-02444 EJD (PR)

**ORDER OF SERVICE; DIRECTING  
DEFENDANTS TO FILE  
DISPOSITIVE MOTION OR  
NOTICE REGARDING SUCH  
MOTION; INSTRUCTIONS TO  
CLERK**

Plaintiff, a California state prisoner, filed the instant pro se civil rights action pursuant to 42 U.S.C. § 1983 against medical officials at Salinas Valley State Prison (“SVSP”). After an initial review, the Court found the complaint was attempting to state a claim under the Eighth Amendment for deliberate indifference to serious medical needs. (Docket No. 14 at 2-3.) However, Plaintiff failed to identify a specific individual as a defendant whose actions caused the violation. (Id. at 3.) The Court also advised Plaintiff that a claim of “medical neglect” was insufficient to make out a violation of the Eighth Amendment, and that any such claim would be dismissed for failure to state a claim. (Id. at 3-4.) Plaintiff has filed an amended complaint. (Docket No. 15.)

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1 **DISCUSSION**

2 **A. Standard of Review**

3 A federal court must conduct a preliminary screening in any case in which a  
4 prisoner seeks redress from a governmental entity or officer or employee of a  
5 governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any  
6 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim  
7 upon which relief may be granted or seek monetary relief from a defendant who is immune  
8 from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally  
9 construed. See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988).

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

14 **B. Plaintiff’s Claims**

15 Plaintiff claims that on November 24, 2014, he injured his left hand at SVSP. (Am.  
16 Compl. at 3.) He brought it to the attention of Defendants Dr. N. Harris and Dr. L.  
17 Gamboa “with negative results.” (Id.) About four months later, he was sent to an outside  
18 hospital where it was discovered that he had a serious injury to his left hand but since “it  
19 had been so long,” there was “nothing they could do.” (Id.) Plaintiff received injections in  
20 his left hand as well as medication. (Id.) Plaintiff claims that he suffers chronic pain and  
21 that they continue to deny him proper medical attention. (Id.) Liberally construed,  
22 Plaintiff states a cognizable claim of deliberate indifference to serious medical needs under  
23 the Eighth Amendment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976).

24 Plaintiff names the CDCR as a defendant “in the official capacity” but has made no  
25 specific allegations of wrongdoing. Accordingly, the CDCR is DISMISSED from this  
26 action.

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1 **CONCLUSION**

2 For the reasons state above, the Court orders as follows:

3 1. The Clerk of the Court shall mail a Notice of Lawsuit and Request for  
4 Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy  
5 of the amended complaint, (Docket No. 15), all attachments thereto, and a copy of this  
6 order upon **Defendants Dr. N. Harris and Dr. L. Gamboa at Salinas Valley State**  
7 **Prison** (P.O. Box 1020, Soledad, CA 93960-1020). The Clerk shall also mail a copy of  
8 this Order to Plaintiff.

9 All other Defendants are **DISMISSED** from this action Plaintiff has made no  
10 specific claims against them.

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

27 3. No later than **ninety-one (91) days** from the date of this order, Defendants  
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1 shall file a motion for summary judgment or other dispositive motion with respect to the  
2 claims in the complaint found to be cognizable above.

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

9 b. **In the event Defendants file a motion for summary judgment, the**  
10 **Ninth Circuit has held that Plaintiff must be concurrently provided the appropriate**  
11 **warnings under Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). See**  
12 **Woods v. Carey, 684 F.3d 934, 940 (9th Cir. 2012).**

13 4. Plaintiff's opposition to the dispositive motion shall be filed with the Court  
14 and served on Defendants no later than **twenty-eight (28) days** from the date Defendants'  
15 motion is filed.

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

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

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

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

8. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is required before the parties may conduct discovery.

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

10. Extensions of time must be filed no later than the deadline sought to be extended and must be accompanied by a showing of good cause.

**IT IS SO ORDERED.**

**Dated:** 4/5/2017



EDWARD J. DAVILA  
United States District Judge