

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY WAYNE OLIVER,
Plaintiff,
v.
I. PEREZ-PANTOJA, et al.,
Defendants.

Case No. 19-07957 EJD (PR)

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

Plaintiff, a state prisoner, filed the instant pro se civil rights action pursuant to 42 U.S.C. § 1983 against officers at the Correctional Training Facility (“CTF”) in Soledad. Dkt. No. 1. The Court dismissed the complaint with leave to amend to attempt to correct various deficiencies in the claims raised. Dkt. No. 8. Plaintiff filed an amended complaint. Dkt. No. 10.

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

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

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

9 **B. Plaintiff’s Claims**

10 Plaintiff claims that Defendants I. Perez-Pantoja, J. Mendoza, B. Aguirre, M.
11 Zavala, I. Ibarra, S. Siordia, and D. Dunstan violated his First Amendments by retaliating
12 against him for filing inmate appeals, which is protected conduct, and that their actions had
13 a chilling effect on his ability to pursue grievances and lawsuits. Dkt. No. 10 at 16.
14 Plaintiff alleges various adverse actions that took place while he housed in the X-Wing, C-
15 Wing, and Z-Wing, from approximately August 2018 through May 2019. *Id.* at 5-15.
16 These actions include the following: housing Plaintiff with an incompatible inmate, an
17 unjustified cell search, destruction of property, repeated cell moves, and obstructing access
18 to the law library. Id. Liberally construed, Plaintiff has stated sufficient facts to support a
19 retaliation claim against Defendants. See Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th
20 Cir. 2005).

21
22 **CONCLUSION**

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

24 1. The Clerk of the Court shall mail a Notice of Lawsuit and Request for
25 Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy
26 of the amended complaint, Dkt. No. 10, all attachments thereto, and a copy of this order
27 upon **Defendant Correctional Officers I. Perez-Pantoja, J. Mendoza, B. Aguirre, M.**

1 **Zavala, I. Ibarra, and S. Siordia, and upon Sgt. D. Dunstan** at the **Correctional**
2 **Training Facility** (P.O. Box 689, Soledad, CA 93960-0689). The Clerk shall also mail a
3 copy of this Order to Plaintiff.

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

20 3. No later than **ninety-one (91) days** from the date this order is filed,
21 Defendants shall file a motion for summary judgment or other dispositive motion with
22 respect to the claims found to be cognizable above.

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

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

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

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

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

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

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

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

27 9. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the
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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: 1/8/2021



EDWARD J. DAVILA
United States District Judge