

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

Goodlow v. Broomfield

No. 24-cv-06902-DMR (PR) (N.D. Cal. July 23, 2025) · No. 24-cv-06902-DMR (PR) · Decided July 23, 2025

OPINION

Goodlow v. Broomfield

PER CURIAM.

1 2 3 4

5 UNITED STATES DISTRICT COURT

6 NORTHERN DISTRICT OF CALIFORNIA

7

SHERODE GOODLOW,

8 Case No. 24-cv-06902-DMR (PR) Plaintiff,

9 ORDER OF PARTIAL DISMISSAL

v. WITH LEAVE TO AMEND; AND

10 SERVING COGNIZABLE CLAIM

WARDEN BROOMFIELD, et al., 11 Defendant. 12

13 I. INTRODUCTION

14 Plaintiff Sherode Goodlow, a state prisoner currently incarcerated at San Quentin 15
Rehabilitation Center (“San Quentin”), formerly known as San Quentin State Prison, has filed a
16 civil rights action pursuant to 42 U.S.C. § 1983, representing himself and alleging
constitutional 17 violations that took place at San Quentin. Dkt. 1. His motion for leave to proceed
in forma 18 pauperis will be granted in a separate Order. Dkt. 6. 19 Plaintiff names as Defendants
the following employees at San Quentin: Correctional 20 Officers Malikan, Forter, Gonzalez,
Smith, Santos, Chohan, and McCaffrey; and Warden 21 Broomfield. Dkt. 1 at 2-4.1 Plaintiff seeks
monetary and punitive damages. Id. at 16. 22 The court now conducts its initial review of the
complaint pursuant to 28 U.S.C. § 1915A. 23 Venue is proper in this judicial district because most
of the events giving rise to Plaintiff’s claims 24 in his complaint are alleged to have occurred at
San Quentin, which is located here. See 28 U.S.C. 25 § 1391(b). 26 27 1 Page number citations
refer to those assigned by the court’s electronic case management

II. DISCUSSION

1 A. Standard of Review 2 A federal court must conduct a preliminary screening in any case in
which a prisoner seeks 3 redress from a governmental entity or officer or employee of a
governmental entity. 28 U.S.C. 4 § 1915A(a). In its review, the court must identify any cognizable
claims and dismiss any claims 5 that are frivolous, malicious, fail to state a claim upon which

relief may be granted or seek 6 monetary relief from a defendant who is immune from such relief. Id. at § 1915A(b)(1), (2). 7 Pleadings submitted by pro se plaintiffs must be liberally construed. *Balistreri v. Pacifica Police* 8 Dep’t, 901 F.2d 696, 699 (9th Cir. 1988). 9 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: 10

(1) that a right secured by the Constitution or laws of the United States was violated, and (2) that 11 the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988). Further, liability may be imposed on an individual defendant if the 13 plaintiff can show that the defendant proximately caused the deprivation of a federally protected 14 right. *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988); *Harris v. City of Roseburg*, 664 F.2d 15 1121, 1125 (9th Cir. 1981). A person deprives another of a constitutional right within the meaning 16 of section 1983 if they engage in an affirmative act, participates in another’s affirmative act or 17 fails to perform an act which they are legally required to undertake, that causes the deprivation of 18 which the plaintiff complains. *Leer*, 844 F.2d at 633; see, e.g., *Robins v. Meecham*, 60 F.3d 1436, 19 1442 (9th Cir. 1995) (finding that a prison official’s failure to intervene to prevent Eighth 20 Amendment violation may be basis for liability). The inquiry into causation must be 21 individualized and focus on the duties and responsibilities of each individual defendant whose acts 22 or omissions are alleged to have caused a constitutional deprivation. *Leer*, 844 F.2d at 633. 23 A supervisor may be liable under section 1983 upon a showing of (1) personal 24 involvement in the constitutional deprivation or (2) a sufficient causal connection between the 25 supervisor’s wrongful conduct and the constitutional violation. *Redman v. Cnty. of San Diego*, 26 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc) (citation omitted). A supervisor therefore generally 27 “is only liable for constitutional violations of his subordinates if the supervisor participated in or 1 directed the violations, or knew of the violations and failed to act to prevent them.” *Taylor v. List*, 2 880 F.2d 1040, 1045 (9th Cir. 1989). ““Supervisory liability is imposed against a supervisory 3 official in [their] individual capacity for [their] own culpable action or inaction in the training, 4 supervision, or control of [their] subordinates, for [their] acquiescence in the constitutional 5 deprivations of which the complaint is made, or for conduct that showed a reckless or callous 6 indifference to the rights of others.”” *Preschooler II v. Clark Cnty. Sch. Bd. of Trs.*, 479 F.3d 7 1175, 1183 (9th Cir. 2007) (citations omitted). Under no circumstances is there respondent 8 superior liability under section 1983. *Taylor*, 880 F.2d at 1045. 9 Finally, Federal Rules of Civil Procedure Rule 8 requires that a complaint set forth “a short 10 and plain statement of the claim showing that the pleader is entitled to relief.” Additionally, Rule 11 8(e) requires that each averment of a pleading be “simple, concise, and direct.” See *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996) (affirming dismissal of complaint that was 13 “argumentative, prolix, replete with redundancy, and largely irrelevant”). While the federal rules 14 require brevity in pleading, a complaint nevertheless must be sufficient to give the defendants “fair 15 notice” of the claim and the “grounds upon which it rests.” *Erickson v. Pardus*, 127 S. Ct. 2197, 16 2200 (2007) (quotation and citation omitted). A complaint that fails to state the specific

acts of 17 the defendant that violated the plaintiff's rights fails to meet the notice requirements of Rule 8(a). 18 See *Hutchinson v. United States*, 677 F.2d 1322, 1328 n.5 (9th Cir. 1982). 19 B. Background 20 In his complaint, Plaintiff alleges the following constitutional violations involving 21 Defendants retaliating against him for filing 602 inmate grievances ("grievances" or "602's") at 22 San Quentin. See Dkt. 1 at 10-14. 23 Plaintiff alleges that on an unknown date, possibly sometime before July, 2022, "because 24 [he] chose[] to exercise his constitutional rights to "file prison grievances against prison staff," 25 unnamed San Quentin officers "were trying to place his life in grave danger by repeatedly 26 assigning [young] gang members inside of his cell." *Id.* at 12. Plaintiff claims he spoke with an 27 unnamed sergeant in San Quentin's Badger Unit about the situation, and the inmate was moved. 1 Smith, who works in [San Quentin's] Badger Unit," where he was being housed. *Id.* 2 Plaintiff lists several instances of alleged retaliation in 2022, and chronologically, it seems 3 that the first one took place on July 3, 2022. *Id.* at 13. Plaintiff alleges that on that date Defendant 4 Smith stopped him at "chow release" and told him he had legal mail. *Id.* at 13. Plaintiff claims 5 that legal mail is "normally passed out at approximately 7:45 - 8:30 pm, and not during chow 6 time." *Id.* Plaintiff alleges Defendant Smith "proceeded to berate Plaintiff for all of the 7 grievances he has filed" and "reminded him that he was in prison." *Id.* Defendant Smith told 8 Plaintiff "this is not a country club" and to "suck it up!" and "stop w[h]ining!" *Id.* 9 On July 4, 2022, during Plaintiff's "canteen hours," Defendants McCaffrey and Smith 10 "accosted" the person working at the canteen who collects inmates' ID's and retrieved Plaintiff's 11 ID. *Id.* at 13. Defendants McCaffrey and Smith then allegedly approached Plaintiff and said, 12 "You are not allowed to shop because you are L.O.P. (meaning Lost of Privilege)." *Id.* Plaintiff 13 informed Defendants McCaffrey and Smith that he was "C-Status," which meant he was "allowed 14 to shop within the prison canteen," but instead they "denied [him] the right to shop at the canteen 15 as every other similar situated inmate." *Id.* 16 Plaintiff further alleges that at 12:30 pm the same date, he attempted to use the law library 17 but Defendant Smith stopped him and told him he could not do so. *Id.* at 13. Plaintiff told 18 Defendant Smith he was allowed to use the library and asked Defendant Smith to show him a rule 19 or memo that said otherwise. *Id.* Defendant Smith told Plaintiff to check in with Correctional 20 Officer Hertudo, a non-party, and after Plaintiff did so Officer Hertudo allowed Plaintiff inside the 21 library. *Id.* After an hour, at approximately 1:30 pm, another non-party named Correction Officer 22 Auramson entered the law library and told Plaintiff to return back to Badger Unit, where he was 23 met by Defendant Smith. *Id.* at 14. Defendant Smith informed Plaintiff that he was "no longer 24 allowed to attend the law library without [Defendant Smith's] permission." *Id.* When Plaintiff 25 asked to "see the memo that makes such [a] claim," Plaintiff alleges Defendant Smith became 26 "irate" and "ordered Plaintiff to repeat what [Defendant Smith] had just said." *Id.* Plaintiff alleges 27 his "Post Traumatic Stress Disorder was triggered," and "after he repeated what Defendant Smith 1 Thereafter, Plaintiff filed a grievance stemming from this incident, and Reviewing Authority L. 2 Bravo, a non-party, "acknowledged that between 12:30 and 3:00 hours, weekdays only, inmates, 3

including Plaintiff, are allowed to utilize the law library.” Id. at 14. 4 Plaintiff states while he was at Badger Unit’s dayroom on July 6, 2022, Defendants 5 Malikan, Forter, and Gonzalez were locking all cell doors in that unit when Plaintiff asked them if 6 he could first use the restroom “since the unit[’]s dayroom is not equip[ped] with a bathroom.” Id. 7 at 10. Plaintiff informed Defendant Gonzalez he “suffer[red] from sever[e] bladder issues” and 8 could not wait, but Defendant Gonzalez denied Plaintiff the right to use the restroom. Id. Plaintiff 9 alleges Defendant Gonzalez told the Plaintiff he had to “wait until unlock,” which was in fifteen 10 minutes. Id. Plaintiff informed Defendants Malikan, Forter, and Gonzalez he would file a 11 grievance, to which Defendant Malikan allegedly responded, “Go ahead. Make sure you spell my 12 name right.” Id. Plaintiff alleges that two weeks prior he had spoken to Defendant Broomfield 13 (San Quentin’s warden) about the lack of toilet in the dayrooms. Id. at 11. Defendant Broomfield 14 told Plaintiff he would “look into it,” but Plaintiff alleges that it was to no avail and “the 15 unconstitutional act continued to take place.” Id. 16 On July 8, 2022, Defendant Malikan used the P.A. system to make the following 17 announcement: “I will be locking the bars, so if you have to take a ‘shit!’ do it now. I will not be 18 unlocking the bars, YOU KNOW WHO YOU ARE!” Id. at 11. Plaintiff alleges that at around 19 8:45 pm on the same day, inmate Beaver’s and Plaintiff’s “power was mysteriously turned off.” 20 Id. Plaintiff alleges that he and inmate Beaver had both recently filed prison grievances against 21 staff in Badger Unit, and they were the only inmates out of 467 inmates who were affected by the 22 power outage. Id. Plaintiff states the power outage happened on a Friday so, they “had to wait 23 until Monday to have [their power] turned back on.” Id. at 11. 24 On July 18, 2022, “because of Plaintiff’s grievances,” unnamed San Quentin staff installed 25 a toilet in the “Pill Call Yard” of Badger Unit. Id at 12. However, Plaintiff alleges “inmates [still] 26 ha[d] to wait until the hourly unlock to use such restroom.” Id. Plaintiff claims San Quentin 27 acknowledged the problem but “failed to properly correct it.” Id. 1 Unit. Id. at 11. Unnamed prison staff ordered Plaintiff to enter Badger Unit’s dining hall. Id. 2 While waiting, Plaintiff had to use the restroom, but the dining hall did not have a restroom. Id. 3 Plaintiff alleges he “summoned the assistance from [Correctional Officers] Vong, and Pelte,” who 4 are non-parties, as well as Defendants Santos and Chohan “to use the restroom.” Id. Plaintiff also 5 “alerted Defendants about his serious medical condition,” but they said no and “told [him] to go sit 6 back down.” Id. Plaintiff alleges Defendant Santos laughed and said, “Hey! [D]on’t get him 7 upset. He likes to file a lot of 602’s.” Id. The other correctional officers laughed, and one 8 unnamed officer responded, “Ya! We all know about him.” Id. at 11-12. Plaintiff alleges he 9 requested to speak with a supervisor but was denied, which “led [to Plaintiff] having to result to 10 obtaining a bottle that was located within the din[ing] hall and urinate inside of it in front of 11 inmates.” Id. at 12. Once the inmates were released from the dining hall, Plaintiff informed 12 Defendant Gonzalez about the incident but Defendant Gonzalez “recklessly (dis)regarded 13 [Plaintiff’s] claims and allowed this kind of behavior to occur.” Id. Plaintiff informed Defendant 14 Gonzalez that he would be filing a grievance on this matter. Id. Apparently, Plaintiff did file

such 15 a grievance, and on September 30, 2022, an investigation into Plaintiff's claims were made but 16 Defendant Broomfield concluded that no misconduct had occurred on July 28, 2022. Id. 17 On January 17, 2023, Plaintiff states he filed a "Reasonable Accommodation Request" to 18 be moved out of Badger Unit "because of the retaliatory action [he] received from correctional 19 officers at [San Quentin]." Id. at 14. Specifically, Plaintiff made such an accommodation request 20 "because of the constant threats and retaliation he was receiving from such officers." Id. Plaintiff 21 was moved to North Block on January 20, 2023. Id. 22 C. Legal Claims 23 Plaintiff alleges the present action arises under the 42 U.S.C. § 1983, and his claims 24 include violations of the First and Eighth Amendments. Dkt. 1 at 3. 25 1. First Amendment 26 To state a claim for First Amendment retaliation against a government official, a plaintiff 27 must demonstrate that (1) he engaged in constitutionally protected activity; (2) as a result, he was 1 continuing to engage in the protected activity; and (3) there was a substantial causal relationship 2 between the constitutionally protected activity and the adverse action. *Mulligan v. Nichols*, 835 3 F.3d 983, 988 (9th Cir. 2016). 4 The prisoner must prove all elements of a viable retaliation claim, including the absence of 5 legitimate correctional goals for the conduct about which he complains. *Pratt v. Rowland*, 65 F.3d 6 802, 806 (9th Cir. 1995). Retaliation claims brought by prisoners must be evaluated in light of 7 concerns over "excessive judicial involvement in day-to-day prison management, which 'often 8 squander[s] judicial resources with little offsetting benefit to anyone.'" Id. at 807 (quoting *Sandin v. Conner*, 515 U.S. 472, 482 (1995)). In particular, courts should "'afford appropriate deference 10 and flexibility' to prison officials in the evaluation of proffered legitimate penological reasons for 11 conduct alleged to be retaliatory." Id. (quoting *Sandin*, 515 U.S. at 482). The prisoner also must 12 show that the constitutionally protected activity in which he was engaged was a substantial or 13 motivating factor for the alleged retaliatory action. See *Hines v. Gomez*, 108 F.3d 265, 267-68 14 (9th Cir. 1997) (inferring retaliatory motive from circumstantial evidence). The prisoner need not 15 prove a total chilling of his First Amendment rights to state a claim for retaliation; that his First 16 Amendment rights were chilled, though not necessarily silenced, is enough." *Rhodes v. Robinson*, 17 408 F.3d 559, 569 (9th Cir. 2005). But the prisoner at least must allege that he suffered harm, 18 since harm that is more than minimal will almost always have a chilling effect. Id. at 567-68 n.11. 19 Plaintiff alleges that Defendant Smith's actions amounted to retaliation against him for 20 filing grievances, including pulling Plaintiff from the chow line and berating him for all the 21 grievances he had filed, see Dkt. 1 at 13, telling Plaintiff to "suck it up!" and "stop w[h]ining!" see 22 id., not allowing Plaintiff to shop at the canteen; id., and trying to keep Plaintiff from accessing the 23 law library. Id. As a result, Plaintiff alleges that some of Defendant Smith's actions "triggered his 24 Post Traumatic Stress Disorder." Id. Plaintiff also claims that he filed a "Reasonable 25 Accommodation Request" to be moved out of Badger Unit due to these acts of retaliation. Id. at 26 14. Accommodations were made, and Plaintiff was moved to another unit on January 20, 2023. 27 Id. Liberally construed, Plaintiff states a cognizable First Amendment

retaliation claim against 1 Plaintiff has not stated a cognizable constitutional claim against the remaining Defendants, 2 including Defendants Broomfield, Malikan, Forter, Gonzalez, Santos, Chohan, and McCaffrey. 3 Plaintiff's allegations of retaliation against the aforementioned Defendants lack a demonstration of 4 a substantial causal relationship between the constitutionally protected activity and the adverse 5 action. Because it appears possible that Plaintiff may be able to correct this deficiency, the court 6 DISMISSES his First Amendment claim against Defendants Broomfield, Malikan, Forter, 7 Gonzalez, Santos, Chohan, and McCaffrey with leave to amend. If Plaintiff chooses to amend his 8 complaint and re-plead this claim against Defendants Broomfield, Malikan, Forter, Gonzalez, 9 Santos, Chohan, and McCaffrey, he must proffer enough facts to state a plausible claim that 10 Defendants Broomfield, Malikan, Forter, Gonzalez, Santos, Chohan, and McCaffrey acted in 11 retaliation as a result of Plaintiff filing grievances. 12 To the extent that Plaintiff's complaint states a claim against Defendants of verbal 13 harassment and threats, such a claim is DISMISSED. See *Freeman v. Arpaio*, 125 F.3d 732, 738 14 (9th Cir. 1997) (Allegations of verbal harassment and abuse fail to state a claim cognizable under 15 42 U.S.C. § 1983.); see also *Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir. 1987) (mere threat does not 16 constitute constitutional wrong, nor do allegations that naked threat was for purpose of denying 17 access to courts compel contrary result). 18 2. Eighth Amendment 19 The Constitution does not mandate comfortable prisons, but neither does it permit 20 inhumane ones. See *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). The treatment a prisoner 21 receives in prison and the conditions under which he is confined are subject to scrutiny under the 22 Eighth Amendment. See *Helling v. McKinney*, 509 U.S. 25, 31 (1993). 23 In determining whether a deprivation of a basic necessity is sufficiently serious to satisfy 24 the objective component of an Eighth Amendment claim, a court must consider the circumstances, 25 nature, and duration of the deprivation. The more basic the need, the shorter the time it can be 26 withheld. See *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000). Substantial deprivations of 27 shelter, food, drinking water or sanitation for four days, for example, are sufficiently serious to 1 state of mind to establish an Eighth Amendment violation depends on the nature of the claim. A 2 prison official violates the Eighth Amendment when two requirements are met: (1) the deprivation 3 alleged must be, objectively, sufficiently serious, *Farmer*, 511 U.S. at 834 (citing *Wilson v. Seiter*, 4 501 U.S. 294, 298 (1991)), and (2) the prison official possesses a sufficiently culpable state of 5 mind, *id.* (citing *Wilson*, 501 U.S. at 297). 6 In prison-conditions cases, the necessary state of mind is one of "deliberate indifference." 7 See, e.g., *Farmer*, 511 U.S. at 834 (inmate safety); *Helling*, 509 U.S. at 32-33 (inmate health); 8 *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (inmate health). 9 Neither negligence nor gross negligence will constitute deliberate indifference. See 10 *Farmer*, 511 U.S. at 835-36 & n.4; see also *Estelle*, 429 U.S. at 106 (establishing that deliberate 11 indifference requires more than negligence). A prison official cannot be held liable under the 12 Eighth Amendment for denying an inmate humane conditions of confinement unless the standard 13 for criminal recklessness is met, i.e., the official knows of and disregards an excessive risk to

14 inmate health or safety. See *Farmer*, 511 U.S. at 837. The official must both be aware of facts
15 from which the inference could be drawn that a substantial risk of serious harm exists, and he
must 16 also draw the inference. See *id.* An Eighth Amendment claimant need not show, however,
that a 17 prison official acted or failed to act believing that harm actually would befall an inmate;
it is 18 enough that the official acted or failed to act despite his knowledge of a substantial risk of
serious 19 harm. See *id.* at 842. This is a question of fact. See *Farmer*, 511 U.S. at 842. A
heightened 20 pleading standard applies to the subjective prong of Eighth Amendment claims: the
Plaintiff must 21 make nonconclusory allegations supporting an inference of unlawful intent.
Alfrey v. United 22 States, 276 F.3d 557, 567-68 (9th Cir. 2002) (applying standard to Bivens
Eighth Amendment 23 claim). 24 Although the Eighth Amendment protects against cruel and
unusual punishment, this does 25 not mean that federal courts can or should interfere whenever
prisoners are inconvenienced or 26 suffer de minimis injuries. See, e.g., *Holloway v. Gunnell*, 685
F.2d 150 (5th Cir. 1985) (no claim 27 stated where prisoner forced to spend two days in hot dirty
cell with no water); *Evans v. Fogg*, 466 1 refuse strewn cell and for two days in flooded cell).
Federal courts instead should avoid 2 enmeshing themselves in the minutiae of prison operations
in the name of the Eighth Amendment. 3 See *Wright v. Rushen*, 642 F.2d 1129, 1132 (9th Cir.
1981). 4 Plaintiff alleges that Defendants Malikan, Forter, Gonzalez Santos, Chohan, Vong, and 5
Pelte did not let Plaintiff use the restroom on July 6, 2022 and July 28, 2022. Dkt. 1 at 10-12. 6
Plaintiff alleges Defendant Broomfield knew about the issue but did not address it. *Id.* at 11-12, 7
21. Plaintiff alleges he has “sever[e] bladder issues” that are documented. *Id.* at 10. Plaintiff also 8
alleges he informed Defendants of his medical issue, but his claims were disregarded. *Id.* at 10, 9
12. Finally, Plaintiff names Defendant Smith but does not link this defendant to his alleged Eighth
10 Amendment violation. 11 Plaintiff’s allegations do not demonstrate Defendant Smith’s personal
involvement in the 12 constitutional deprivation, and his allegations against Defendants
Broomfield, Malikan, Forter, 13 Gonzalez, Santos, Chohan, Vong, and Pelte do not state a claim
under this standard. Plaintiff’s 14 claims fail to state a substantial, objective serious offense.
Plaintiff only states Defendants 15 Malikan, Forter, and Gonzalez told him to wait fifteen minutes
on July 6, 2022, see *id.* at 10, and 16 Defendants Santos, Chohan, Vong, and Pelte did not allow
Plaintiff to use the restroom while a 17 random search was being conducted on July 28, 2022, see
id. at 12. Because such allegations do 18 not seem to rise to a level of an Eighth Amendment
violation, this claim is DISMISSED with 19 leave to amend. Plaintiff must show that these
Defendants’ actions amounted to deliberate 20 indifference in violation of the Eighth Amendment.
In an amended complaint, Plaintiff must 21 provide more detail establishing that the named
Defendants had a culpable state of mind, and that 22 he suffered as a result of Defendants’ actions,
i.e., how the denial of the restroom for a short span 23 of time was sufficiently serious.
Accordingly, his claims against Defendants Broomfield, 24 Malikan, Forter, Gonzalez, Santos,
Smith, Chohan, Vong, and Pelte are DISMISSED with leave to 25 amend.

26 III. CONCLUSION

27 For the foregoing reasons, the court orders as follows: 1 Smith. 2 2. The court DISMISSES with leave to amend Plaintiff's First Amendment retaliation 3 claim against Defendants Broomfield, Malikan, Forter, Gonzalez, Santos, Chohan, Vong, and 4 Pelte. 5 3. The court DISMISSES with leave to amend Plaintiff's Eighth Amendment claim 6 against Defendants Broomfield, Malikan, Forter, Gonzalez, Santos, Smith, Chohan, Vong, and 7 Pelte. 8 4. If Plaintiff chooses to file an amended complaint, he must file the amended 9 complaint within twenty-eight (28) days of the date of this Order. The amended complaint must 10 include the caption and civil case number used in this Order—Case No. 24-cv-06902-DMR 11 (PR)—and the words "AMENDED COMPLAINT" on the first page. He must use the court's 12 complaint form and answer all the questions on the form in order for the action to proceed. 13 Because an amended complaint completely replaces the previous complaints, Plaintiff must 14 include in his amended complaint all the claims he wishes to present, including any amended 15 claims (i.e., the aforementioned First and Eighth Amendment claims) as well as the First 16 Amendment claim against Defendant Smith, which the court has already found cognizable. See 17 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Plaintiff may not incorporate material 18 from the prior complaint by reference. Failure to file an amended complaint in accordance with 19 this Order in the time provided will result in the following: (1) the dismissal of his First 20 Amendment claim against Defendants Broomfield, Malikan, Forter, Gonzalez, Santos, Chohan, 21 Vong, and Pelte, and his Eighth Amendment claim Defendants Broomfield, Malikan, Forter, 22 Gonzalez, Santos, Smith, Chohan, Vong, and Pelte; (2) the initial complaint (Dkt. 1) remaining the 23 operative complaint; and (3) this action proceeding in accordance with this Order. 24 5. The Clerk of the Court shall serve Correctional Officer Defendant Smith at San 25 Quentin. Service on the listed defendant shall proceed under the California Department of 26 Corrections and Rehabilitation's ("CDCR") e-service pilot program for civil rights cases from 27 prisoners in CDCR custody. In accordance with the program, the Clerk is directed to serve on 1 Report of E-Service Waiver form and a summons. The Clerk shall serve by mail a copy of this 2 order on Plaintiff. 3 No later than forty (40) days after service of this order via email on CDCR, CDCR shall 4 provide the court a completed CDCR Report of E-Service Waiver advising the court if the 5 defendant listed in this order will be waiving service of process without the need for service by the 6 United States Marshal Service ("USMS") or if defendant will decline to waive service or could not 7 be reached. CDCR also shall provide a copy of the CDCR Report of E-Service Waiver and of the 8 notice of assignment of prisoner case to a magistrate judge and accompanying magistrate judge 9 jurisdiction consent or declination to consent form to the California Attorney General's Office, 10 which, within twenty-one (21) days, shall file with the court a waiver of service of process for 11 any defendant(s) who are waiving service and, within twenty-eight (28) days thereafter, shall file 12 a magistrate judge jurisdiction consent or declination to consent form as to any defendant(s) who 13 waived service. 14 Upon receipt of the CDCR Report of E-Service Waiver, the Clerk shall prepare for each 15 defendant who has not waived service according to the

CDCR Report of E-Service Waiver a 16 USM-285 form. The Clerk shall provide to the USMS the completed USM-285 form and copies 17 of this order, summons, operative complaint and notice of assignment of prisoner case to a 18 magistrate judge and accompanying magistrate judge jurisdiction consent or declination to consent 19 form for service upon each defendant who has not waived service. The Clerk also shall provide to 20 the USMS a copy of the CDCR Report of E-Service Waiver. 21 6. The defendant shall answer the complaint in accordance with the Federal Rules of 22 Civil Procedure. The following briefing schedule shall govern dispositive motions in this action: 23 a. No later than sixty (60) days from the date their answer is due, the 24 defendant shall file a motion for summary judgment or other dispositive motion. The motion must 25 be supported by adequate factual documentation, must conform in all respects to Federal Rule of 26 Civil Procedure 56, and must include as exhibits all records and incident reports stemming from 27 1 the events at issue. A motion for summary judgment also must be accompanied by a Rand2 notice 2 so that the plaintiff will have fair, timely and adequate notice of what is required of him in order to 3 oppose the motion. *Woods v. Carey*, 684 F.3d 934, 935 (9th Cir. 2012) (notice requirement set out 4 in *Rand* must be served concurrently with motion for summary judgment). A motion to dismiss 5 for failure to exhaust available administrative remedies must be accompanied by a similar notice. 6 However, the court notes that under this Circuit's case law, in the rare event that a failure to 7 exhaust is clear on the face of the complaint, the defendant may move for dismissal under Rule 8 12(b)(6) as opposed to the previous practice of moving under an unenumerated Rule 12(b) motion. 9 *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (overruling *Wyatt v. Terhune*, 315 F.3d 1108, 10 1119 (9th Cir. 2003), which held that failure to exhaust available administrative remedies under 11 the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), should be raised by a defendant as an 12 unenumerated Rule 12(b) motion). Otherwise, if a failure to exhaust is not clear on the face of the 13 complaint, the defendant must produce evidence proving failure to exhaust in a motion for 14 summary judgment under Rule 56. *Id.* If undisputed evidence viewed in the light most favorable 15 to the plaintiff shows a failure to exhaust, the defendant is entitled to summary judgment under 16 Rule 56. *Id.* But if material facts are disputed, summary judgment should be denied and the 17 district judge rather than a jury should determine the facts in a preliminary proceeding. *Id.* at 18 1168. 19 If the defendant is of the opinion that this case cannot be resolved by summary judgment, 20 the defendant shall so inform the court at least seven (7) days prior to the date the summary 21 judgment motion is due. All papers filed with the court shall be promptly served on the plaintiff. 22 b. The plaintiff's opposition to the dispositive motion shall be filed with the 23 court and served on the defendant no later than twenty-eight (28) days after the date on which the 24 defendant's motion is filed. 25 c. The plaintiff is advised that a motion for summary judgment under Rule 56 26 of the Federal Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you 27 1 must do in order to oppose a motion for summary judgment. Generally, summary judgment must 2 be granted when there is no genuine issue of material fact—that is, if

there is no real dispute about 3 any fact that would affect the result of your case, the party who asked for summary judgment is 4 entitled to judgment as a matter of law, which will end your case. When a party you are suing 5 makes a motion for summary judgment that is properly supported by declarations (or other sworn 6 testimony), you cannot simply rely on what your complaint says. Instead, you must set out 7 specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, 8 as provided in Rule 56(c), that contradict the facts shown in the defendant's declarations and 9 documents and show that there is a genuine issue of material fact for trial. If you do not submit 10 your own evidence in opposition, summary judgment may be entered against you. If summary 11 judgment is granted, your case will be dismissed and there will be no trial. *Rand*, 154 F.3d at 962- 12 63. 13 The plaintiff also is advised that—in the rare event that the defendant argues that the 14 failure to exhaust is clear on the face of the complaint—a motion to dismiss for failure to exhaust 15 available administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your case, albeit 16 without prejudice. To avoid dismissal, you have the right to present any evidence to show that 17 you did exhaust your available administrative remedies before coming to federal court. Such 18 evidence may include: (1) declarations, which are statements signed under penalty of perjury by 19 you or others who have personal knowledge of relevant matters; (2) authenticated documents— 20 documents accompanied by a declaration showing where they came from and why they are 21 authentic, or other sworn papers such as answers to interrogatories or depositions; (3) statements 22 in your complaint insofar as they were made under penalty of perjury and they show that you have 23 personal knowledge of the matters state therein. As mentioned above, in considering a motion to 24 dismiss for failure to exhaust under Rule 12(b)(6) or failure to exhaust in a summary judgment 25 motion under Rule 56, the district judge may hold a preliminary proceeding and decide disputed 26 issues of fact with regard to this portion of the case. *Albino*, 747 F.3d at 1168. 27 (The notices above do not excuse the defendant's obligation to serve similar notices again 1 motions for summary judgment. *Woods*, 684 F.3d at 935.) 2 d. The defendant shall file a reply brief no later than fourteen (14) days after 3 the date the plaintiff's opposition is filed. 4 e. The summary judgment motion shall be deemed submitted as of the date the 5 reply brief is due. No hearing will be held on the motion unless the court so orders at a later date. 6 7. Discovery may be taken in this action in accordance with the Federal Rules of Civil 7 Procedure. Leave of the court pursuant to Rule 30(a)(2) is hereby granted to the defendant to 8 depose the plaintiff and any other necessary witnesses confined in prison. 9 8. All communications by the plaintiff with the court must be served on the 10 defendant's counsel by mailing a true copy of the document to them. 11 9. It is the plaintiff's responsibility to prosecute this case. The plaintiff must keep the 12 court informed of any change of address and must comply with the court's orders in a timely 13 fashion. Pursuant to Northern District Local Rule 3-11, a pro se party whose address changes 14 while an action is pending must promptly file a notice of change of address specifying the new 15 address. See L.R. 3-11(a). The court may dismiss without prejudice a complaint when: (1) mail 16 directed to the

pro se party by the court has been returned to the court as not deliverable, and 17 (2)the court fails to receive within sixty days of this return a written communication from the pro 18 se party indicating a current address. See L.R. 3-11(b). 19 10. Upon a showing of good cause, requests for a reasonable extension of time will be 20 granted provided they are filed on or before the deadline they seek to extend. 21 11. The Clerk shall include a copy of a blank complaint form with a copy of this Order 22 to the plaintiff. 23 IT IS SO ORDERED. 24 Dated: July 23, 2025 25

DONNA M. RYU

26 Chief Magistrate Judge 27