

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

Deaton v. Diaz

Deaton · No. 24-cv-04328-EKL · Decided April 1, 2025

OPINION

Deaton v. Diaz

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 HERBERT NATHANIEL DEATON, Case No. 24-cv-04328-EKL 8 Plaintiff,

ORDER PARTIALLY DISMISSING

9 v. COMPLAINT AND ORDERING

SERVICE

10 JOSE DIAZ, et al., Defendants. 11 12 13 Plaintiff Herbert N. Deaton, a pretrial detainee
proceeding pro se, filed the instant civil 14 rights lawsuit under 42 U.S.C. § 1983 against staff at
San Francisco County Jail #3. ECF No. 1. 15 The Court found that the complaint stated a
Fourteenth Amendment claim against Mr. Jose Diaz 16 for the denial of meals. ECF No. 9 at 5.
The remaining claims and defendants were dismissed 17 with leave to amend to provide more
information. Id. The time to amend has passed and plaintiff 18 has not filed an amended complaint
or otherwise communicated with the Court.

19 CONCLUSION

20 1. The case continues against Jose Diaz. All other defendants are DISMISSED. The 21 Clerk
will issue a summons and the United States Marshal will serve, without prepayment of fees, 22
copies of the complaint (ECF No. 1) with attachments and copies of this order on Mr. Jose Diaz,
23 Aramark Food Director at San Francisco County Jail #3, 1 Moreland Dr, San Bruno, CA
94066. 24 2. In order to expedite the resolution of this case, the Court orders as follows: 25 a. No
later than sixty days from the date of service, defendant will file a 26 motion for summary
judgment or other dispositive motion. The motion will be supported by 27 adequate factual
documentation and shall conform in all respects to Federal Rule of Civil 1 events at issue. If
defendant is of the opinion that this case cannot be resolved by summary 2 judgment, he will so
inform the Court prior to the date his summary judgment motion is due. All 3 papers filed with the
Court will be promptly served on the plaintiff. 4 b. At the time the dispositive motion is served,
defendants will also serve, on a 5 separate paper, the appropriate notice or notices required by
Rand v. Rowland, 154 F.3d 952, 953- 6 54 (9th Cir. 1998) (en banc), and Wyatt v. Terhune, 315

F.3d 1108, 1120 n.4 (9th Cir. 2003). See 7 Woods v. Carey, 684 F.3d 934, 940-41 (9th Cir. 2012) (Rand and Wyatt notices must be given at 8 the time motion for summary judgment or motion to dismiss for non-exhaustion is filed, not 9 earlier); Rand, 154 F.3d at 960 (separate paper requirement). 10 c. Plaintiff's opposition to the dispositive motion, if any, will be filed with the 11 Court and served upon defendants no later than twenty-eight days from the date the motion was 12 served upon him. Plaintiff must read the attached page headed "NOTICE -- WARNING," which 13 is provided to him pursuant to Rand v. Rowland, 154 F.3d 952, 953-54 (9th Cir. 1998) (en banc), 14 and Klingele v. Eikenberry, 849 F.2d 409, 411-12 (9th Cir. 1988). 15 If defendants file a motion for summary judgment claiming that plaintiff failed to exhaust 16 his available administrative remedies as required by 42 U.S.C. § 1997e(a), plaintiff should take 17 note of the attached page headed "NOTICE -- WARNING (EXHAUSTION)," which is provided 18 to him as required by Wyatt v. Terhune, 315 F.3d 1108, 1120 n.4 (9th Cir. 2003). 19 d. If defendants wish to file a reply brief, they shall do so no later than 20 fourteen days after the opposition is served upon him. 21 e. The motion shall be deemed submitted as of the date the reply brief is due. 22 No hearing will be held on the motion unless the Court so orders at a later date. 23 3. All communications by plaintiff with the Court must be served on defendants, or 24 defendants' counsel once counsel has been designated, by mailing a true copy of the document to 25 defendants or defendants' counsel. 26 4. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. 27 No further Court order is required before the parties may conduct discovery. 1 informed of any change of address by filing a separate paper with the clerk headed "Notice of 2 || Change of Address." He also must comply with the Court's orders in a timely fashion. Failure to 3 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of 4 Civil Procedure 41(b). 5 IT IS SO ORDERED. 6 || Dated: April 1, 2025 7 8 umi K. Lee 9 United States District Judge 10 11 a 12 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28

1 NOTICE -- WARNING (SUMMARY JUDGMENT)

2 If defendants move for summary judgment, they are seeking to have your case dismissed. 3 A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if 4 granted, end your case.

5 Rule 56 tells you what you must do in order to oppose a motion for summary judgment.

6 Generally, summary judgment must be granted when there is no genuine issue of material fact-- 7 that is, if there is no real dispute about any fact that would affect the result of your case, the party 8 who asked for summary judgment is entitled to judgment as a matter of law, which will end your 9 case. When a party you are suing makes a motion for summary judgment that is properly 10 supported by declarations (or other sworn testimony), you cannot simply rely on what your 11 complaint says. Instead, you must set out specific facts in declarations, depositions, answers to 12 interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts 13 shown in the defendant's declarations and documents and show that there is

a genuine issue of 14 material fact for trial. If you do not submit your own evidence in opposition, summary judgment, 15 if appropriate, may be entered against you. If summary judgment is granted, your case will be 16 dismissed and there will be no trial.

17 NOTICE -- WARNING (EXHAUSTION)

18 If defendants file a motion for summary judgment for failure to exhaust, they are seeking 19 to have your case dismissed. If the motion is granted it will end your case. 20 You have the right to present any evidence you may have which tends to show that you did 21 exhaust your administrative remedies. Such evidence may be in the form of declarations 22 (statements signed under penalty of perjury) or authenticated documents, that is, documents 23 accompanied by a declaration showing where they came from and why they are authentic, or other 24 sworn papers, such as answers to interrogatories or depositions. 25 If defendants file a motion for summary judgment for failure to exhaust and it is granted, 26 your case will be dismissed and there will be no trial. 27