

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Magana-Torres v. Borla

No. 24-cv-04656-DMR (PR) (N.D. Cal. July 29, 2025) · No. 24-cv-04656-DMR (PR) · Decided July 29, 2025

SUMMARY

The court conducts its initial screening under 28 U.S.C. § 1915A of a self-represented prisoner’s sealed § 1983 complaint concerning a December 15, 2022 cell search. It finds a cognizable Eighth Amendment deliberate-indifference claim against several correctional officers, dismisses official-capacity damages claims and other claims with leave to amend, and directs service on the cognizable-claim defendants. The order also sets an amendment deadline, service procedures, and a briefing schedule for dispositive motions.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Donna M. Ryu
JURISDICTION	United States District Court for the Northern District of California
DECIDED	July 29, 2025
DOCKET	24-cv-04656-DMR (PR)
DISPOSITION	other
PROCEDURAL POSTURE	Prisoner civil-rights action under 42 U.S.C. § 1983 undergoing mandatory screening under 28 U.S.C. § 1915A.
STANDARD OF REVIEW	Mandatory screening under 28 U.S.C. § 1915A; the court must identify cognizable claims and dismiss claims that are frivolous, malicious, fail to state a claim, or seek monetary relief from an immune defendant. Pleadings filed by self-represented litigants are liberally construed.
PRECEDENTIAL VALUE	Nonprecedential district-court order; precedential status not stated
PARTIES	Jose Humberto Magana-Torres v. Edward J. Borla, P. McDonald, D. Lockhart, S. Sanchez, T. Sullivan, Larr, Magna, Dorr, John Does 1 Through 30, Schoch

TOPICS

prisoners rights

section 1983

civil procedure

government liability

sovereign immunity

PRACTICE AREAS

Prisoner civil rights

Section 1983 litigation

Constitutional torts

Federal civil procedure

Sovereign immunity

QUESTIONS PRESENTED

1. Whether the complaint stated a cognizable Eighth Amendment claim under 42 U.S.C. § 1983 based on deliberate indifference to Plaintiff's safety.
2. Whether claims for monetary damages against defendants in their official capacities were barred by the Eleventh Amendment.
3. Whether the complaint adequately alleged each defendant's personal participation or causal connection to the alleged constitutional violations.
4. Whether Plaintiff's conclusory references to the Fifth, Sixth, and Fourteenth Amendments stated cognizable claims.
5. Whether Plaintiff could proceed against unidentified Doe defendants subject to later identification through discovery.

HOLDINGS

1. Claims seeking monetary relief against the defendants in their official capacities are barred by the Eleventh Amendment and were dismissed with leave to amend.
2. Liberally construed, the complaint stated a cognizable § 1983 claim against Lockhart, Sanchez, Sullivan, Magna, and Dorr for deliberate indifference to Plaintiff's safety in violation of the Eighth Amendment.
3. A § 1983 defendant must have personally participated in, directed, or caused the alleged constitutional deprivation; supervisory status or membership in a group is insufficient.
4. The complaint failed to state claims for violations of the Fifth, Sixth, or Fourteenth Amendments because it did not allege specific facts showing how the named defendants actually and proximately caused those violations.
5. A prisoner may proceed temporarily against unidentified defendants when their identities cannot reasonably be known before filing, provided discovery may reveal their identities and the plaintiff timely amends to name them and alleges each defendant's specific role.

KEY QUOTATIONS

"An official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." (Order at 4)

"A prison official violates the Eighth Amendment only when two requirements are met: (1) the deprivation alleged is, objectively, sufficiently serious, and (2) the official is, subjectively, deliberately indifferent to the inmate's safety." (Order at 5)

“A defendant cannot be held liable simply based on his membership in a group without showing his individual participation in unlawful conduct.” (Order at 7)

FACTUAL BACKGROUND

Plaintiff is a state prisoner incarcerated at the Correctional Training Facility. He alleged that defendants' actions during a December 15, 2022 cell search placed him at risk and violated the Eighth Amendment. Because the complaint was sealed to protect confidential information, the court avoided discussing the specific allegations.

PROCEDURAL HISTORY

Plaintiff, a California state prisoner proceeding without counsel and in forma pauperis, filed a sealed § 1983 complaint concerning events during a December 15, 2022 cell search. The court screened the complaint under § 1915A, dismissed several claims with leave to amend, found an Eighth Amendment deliberate-indifference claim cognizable against five correctional employees, and ordered service on those defendants through the CDCR e-service program.

DISPOSITION

other

CASES CITED

- *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990)
- *West v. Atkins*, 487 U.S. 42, 48 (1988)
- *Leer v. Murphy*, 844 F.2d 628, 633-34 (9th Cir. 1988)
- *Harris v. City of Roseburg*, 664 F.2d 1121, 1125 (9th Cir. 1981)
- *Robins v. Meecham*, 60 F.3d 1436, 1442 (9th Cir. 1995)
- *Redman v. County of San Diego*, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc)
- *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989)
- *Preschooler II v. Clark County School Board of Trustees*, 479 F.3d 1175, 1183 (9th Cir. 2007)
- *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996)
- *Erickson v. Pardus*, 551 U.S. 89, 93 (2007)
- *Kentucky v. Graham*, 473 U.S. 159, 166, 169 (1985)
- *Farmer v. Brennan*, 511 U.S. 825, 833-34 (1994)
- *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)
- *Wiltsie v. California Department of Corrections*, 406 F.2d 515, 518 (9th Cir. 1968)
- *Velasquez v. Senko*, 643 F. Supp. 1172, 1180 (N.D. Cal. 1986)
- *Barsten v. Department of the Interior*, 896 F.2d 422
- *Chuman v. Wright*, 76 F.3d 292, 294 (9th Cir. 1996)
- *Jones v. Williams*, 297 F.3d 930, 936 (9th Cir. 2002)
- *Keates v. Koile*, 883 F.3d 1228, 1241 (9th Cir. 2018)

- Ashcroft v. Iqbal, 556 U.S. 662, 676-83 (2009)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992)
- Woods v. Carey, 684 F.3d 934, 935 (9th Cir. 2012)
- Albino v. Baca, 747 F.3d 1162, 1166, 1168 (9th Cir. 2014)
- Wyatt v. Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003)
- Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc)

OPINION

Magana-Torres v. Borla

PER CURIAM.

1 2 3 4

5 UNITED STATES DISTRICT COURT

6 NORTHERN DISTRICT OF CALIFORNIA

7

JOSE HUMBERTO MAGANA-TORRES,1

8 Case No. 24-cv-04656-DMR (PR) Plaintiff,

9 ORDER OF PARTIAL DISMISSAL

v. WITH LEAVE TO AMEND; AND

10 SERVING COGNIZABLE CLAIM

EDWARD J. BORLA, et al., 11 Defendants. 12

13 I. INTRODUCTION

14 Self-represented Plaintiff Jose Humberto Magana-Torres, a state prisoner currently 15
incarcerated at Correctional Training Facility (“CTF”), filed a civil rights action pursuant to 42 16
U.S.C. § 1983, alleging constitutional violations that took place at CTF. Dkt. 1 (sealed). Plaintiff
17 has been granted leave to proceed in forma pauperis. Dkt. 9. The court granted Plaintiff’s
motion 18 for administrative relief to file his complaint under seal. See id. at 1. The complaint is
not 19 available for inspection by the public absent a court order permitting such inspection. Id. 20
Accordingly, this Order avoids reference to confidential information contained in the complaint,
21 including, “names of confidential informants (CI) and the names of inmates that are involved in
22 current an[d] undergoing investigation” Id. at 1. 23 Plaintiff names as Defendants the
following employees at CTF in their official and 24 1 As an initial matter, the court notes that
Plaintiff has listed himself as the plaintiff in this action. 25 See Dkt. 1 at 1 (sealed). The court will
proceed to review the pending complaint with Plaintiff as the only plaintiff in this action. To the
extent that Plaintiff’s allegations in the complaint could be 26 construed as indicating any
violations against any co-plaintiffs, see id. at 5, 7, 10 (sealed), any such claims should proceed in
separate cases. Because most claims are not common to multiple 27 plaintiffs, and because self-
represented prisoners have limited access to one another and cannot 1 individual capacities:
Warden J. Borla; Lieutenant P. McDonald, Sergeant D. Lockhart; 2 Correctional Officers S.

Sanchez, T. Sullivan, Larr, Magna, and Dorr; and “John Does 1 Through 3 30.” Dkt. 1 at 2, 10 (sealed).² Plaintiff seeks injunctive relief as well as monetary and punitive ⁴ damages. Id. at 3, 16-17 (sealed). ⁵ The court now conducts its initial review of the complaint pursuant to 28 U.S.C. § 1915A. ⁶ Venue is proper because most of the events giving rise to Plaintiff’s claims are alleged to have ⁷ occurred at CTF, which is located in this judicial district. See 28 U.S.C. § 1391(b).

⁸ II. DISCUSSION

⁹ A. Standard of Review ¹⁰ A federal court must conduct a preliminary screening in any case in which a prisoner seeks ¹¹ redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. ¹² § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims ¹³ that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek ¹⁴ monetary relief from a defendant who is immune from such relief. Id. at § 1915A(b)(1), (2). ¹⁵ Pleadings submitted by self-represented plaintiffs must be liberally construed. *Balistreri v. ¹⁶ Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). ¹⁷ To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: ¹⁸ (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that ¹⁹ the alleged violation was committed by a person acting under the color of state law. *West v. ²⁰ Atkins*, 487 U.S. 42, 48 (1988). Further, liability may be imposed on an individual defendant if the ²¹ plaintiff can show that the defendant proximately caused the deprivation of a federally protected ²² right. *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988); *Harris v. City of Roseburg*, 664 F.2d 23 1121, 1125 (9th Cir. 1981). A person deprives another of a constitutional right within the meaning ²⁴ of section 1983 if they engage in an affirmative act, participates in another’s affirmative act or ²⁵ fails to perform an act which they are legally required to undertake, that causes the deprivation of ²⁶ ²⁷ 2 Page number citations refer to those assigned by the court’s electronic case management filing 1 which the plaintiff complains. *Leer*, 844 F.2d at 633; see, e.g., *Robins v. Meecham*, 60 F.3d 1436, 2 1442 (9th Cir. 1995) (finding that a prison official’s failure to intervene to prevent Eighth ³ Amendment violation may be basis for liability). The inquiry into causation must be ⁴ individualized and focus on the duties and responsibilities of each individual defendant whose acts ⁵ or omissions are alleged to have caused a constitutional deprivation. *Leer*, 844 F.2d at 633. ⁶ A supervisor may be liable under section 1983 upon a showing of (1) personal ⁷ involvement in the constitutional deprivation or (2) a sufficient causal connection between the ⁸ supervisor’s wrongful conduct and the constitutional violation. *Redman v. Cnty. of San Diego*, 9 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc) (citation omitted). A supervisor therefore generally ¹⁰ “is only liable for constitutional violations of his subordinates if the supervisor participated in or ¹¹ directed the violations, or knew of the violations and failed to act to prevent them.” *Taylor v. List*, ¹² 880 F.2d 1040, 1045 (9th Cir. 1989). ““Supervisory liability is imposed against a supervisory ¹³ official in [their] individual capacity for [their] own culpable action or inaction in the training, ¹⁴ supervision, or control of [their] subordinates, for [their] acquiescence in the constitutional ¹⁵ deprivations of which the complaint is made, or for conduct that showed a

reckless or callous indifference to the rights of others.” *Preschooler II v. Clark Cnty. Sch. Bd. of Trs.*, 479 F.3d 171175, 1183 (9th Cir. 2007) (citations omitted). Under no circumstances is there respondent superior liability under section 1983. *Taylor*, 880 F.2d at 1045. Finally, Federal Rules of Civil Procedure Rule 8 requires that a complaint set forth “a short and plain statement of the claim showing that the pleader is entitled to relief.” Additionally, Rule 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 “argumentative, prolix, replete with redundancy, and largely irrelevant”). While the federal rules require brevity in pleading, a complaint nevertheless must be sufficient to give the defendants “fair notice” of the claim and the “grounds upon which it rests.” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (quotation and citation omitted). A complaint that fails to state the specific acts of the defendant that violated the plaintiff’s rights fails to meet the notice requirements of Rule 8(a).

B. Background
1 In his sealed complaint, Plaintiff alleges violations of his Eighth Amendment rights 2 stemming from Defendants’ actions during a cell search on December 15, 2022, which put him at 3 risk.3 See Dkt. 1 at 5-15 (sealed). 4 **C. Legal Claim** 5

1. Official Capacity Claim

6 Plaintiff has sued the named Defendants individually and in their official capacity seeking 7 monetary relief. Dkt. 1 at 2 (sealed). “[A]n official-capacity suit is, in all respects other than 8 name, to be treated as a suit against the entity.” *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). 9 Unless waived, the Eleventh Amendment bars a federal court award of damages against a state, 10 state agency, or state official sued in an official capacity. *Id.* at 169. As there has been no waiver 11 here, Plaintiff’s claim against Defendants in their official capacity for monetary damages is 12 DISMISSED. Plaintiff is granted leave to amend, provided he can do so in good faith. 13

2. Eighth Amendment Claim

14 The Eighth Amendment’s prohibition against cruel and unusual punishment requires that 15 prison officials take reasonable measures for the safety of inmates. See *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). In particular, officials have a duty to protect inmates from violence at the 17 hands of other inmates. See *id.* at 833. A prison official violates the Eighth Amendment only 18 when two requirements are met: (1) the deprivation alleged is, objectively, sufficiently serious, 19 and (2) the official is, subjectively, deliberately indifferent to the inmate’s safety. See *id.* at 834. 20 As previously noted, this Order does not discuss the allegations in order to maintain the 21 confidentiality of sensitive information in the sealed complaint. Liberally construed, the 22 allegations of the complaint state a claim under section 1983 based on the December 15, 2022 cell 23 24 3 Earlier in his complaint, Plaintiff makes a conclusory reference to alleged violations of his Fifth, 25 Sixth, Eighth and Fourteenth Amendment rights stemming from the December 15, 2022 search, but he only elaborates on the Eighth Amendment claim. Compare Dkt. 1 at 5, 15 with 14-15 26 (sealed). Plaintiff fails to set forth specific facts showing how the named Defendants actually and proximately caused the deprivation of his Fifth, Sixth, and Fourteenth Amendment

rights. See 27 *Leer*, 844 F.2d at 634. Thus, the court DISMISSES with leave to amend any claims of violations 1 search for deliberate indifference to Plaintiff's safety in violation of his Eighth Amendment rights 2 against Defendants Lockhart, Sanchez, Sullivan, Magna, and Dorr. Dkt. 1 at 5-15 (sealed). 3 The complaint also mentions "John and or Jane Does, a Correctional Sergeant, [and] 4 Correctional Officers," who the court assumes to be unnamed prison officials allegedly involved 5 in the December 15, 2022 search. *Id.* at 5 (sealed). He also lists "John Does 1 through 30" as 6 Defendants under the "Parties" section. *Id.* at 2 (sealed). It appears that Plaintiff names them as 7 Doe Defendants, whose identities he apparently intends to learn through discovery. Although the 8 use of "John Doe" to identify a defendant is not favored in the Ninth Circuit, see *Gillespie v. 9 Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980); *Wiltzie v. Cal. Dep't of Corrections*, 406 F.2d 515, 10 518 (9th Cir. 1968), situations may arise where the identity of alleged defendants cannot be known 11 prior to the filing of a complaint. In such circumstances, the plaintiff should be given an 12 opportunity through discovery to identify the unknown defendants, unless it is clear that discovery 13 would not uncover their identities or that the complaint should be dismissed on other grounds. See 14 *Gillespie*, 629 F.2d at 642; *Velasquez v. Senko*, 643 F. Supp. 1172, 1180 (N.D. Cal. 1986). 15 Plaintiff must name these individuals by the due date scheduled in this Order to file an amended 16 complaint. Plaintiff must also set forth specific facts showing how each of these currently 17 unnamed prison officials actually and proximately caused the deprivation of a federally protected 18 right. Failure to do so will result in dismissal of these Doe Defendants without prejudice to 19 Plaintiff filing new actions against them once their names are known. 20 Lastly, Plaintiff has failed to link the remaining named Defendants to his claim. With 21 respect to Defendants Borla, McDonald, and Larr, Plaintiff mentions these Defendants in the list 22 of Defendants section of his complaint but does not allege how each of them actually or 23 proximately caused the deprivation of the federally protected rights of which he complains 24 pursuant to *Leer v. Murphy*. See Dkt. 1 at 2 (sealed). Plaintiff has also listed Defendant Schoch in 25 the body of the complaint, see *id.* at 5-6 (sealed), but it is not clear whether this prison official is a 26 Defendant in this action because Plaintiff did not include Defendant Schoch in the caption or the 27 list of Defendants section of his complaint. See *Barsten v. Dep't of the Interior*, 896 F.2d 422, 1 Plaintiff wishes to pursue claims against Defendants Borla, McDonald, Larr, and Schoch, Plaintiff 2 must set forth specific facts showing how each of these individuals actually and proximately 3 caused the deprivation of a federally protected right. 4 A defendant cannot be held liable simply based on his membership in a group without 5 showing his individual participation in unlawful conduct. *Chuman v. Wright*, 76 F.3d 292, 294 6 (9th Cir. 1996). Either personal involvement or integral participation of each defendant in the 7 alleged constitutional violation is required before liability may be imposed. See *Jones v. Williams*, 8 297 F.3d 930, 936 (9th Cir. 2002). In amending his complaint, Plaintiff must pay close attention 9 to the following: "A person deprives another 'of a constitutional right, within the meaning of 10 section 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to 11 perform an act which he is

legally required to do that causes the deprivation of which [plaintiff 12 complains].” Leer, 844 F.2d at 633 (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 13 1978)). The inquiry into causation must be individualized and focus on the duties and 14 responsibilities of each individual defendant whose acts or omissions are alleged to have caused a 15 constitutional deprivation. *Id.* Defendants cannot be held liable for a constitutional violation 16 under section 1983 unless they were integral participants in the unlawful conduct. *Keates v. Koile*, 17 883 F.3d 1228, 1241 (9th Cir. 2018). In addition, supervisory defendants are not responsible 18 simply because they are supervisors. There is no respondeat superior liability under section 1983. 19 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). It is not enough that the supervisor merely 20 has a supervisory relationship over the defendants; the plaintiff must show that the supervisor 21 “participated in or directed the violations, or knew of the violations and failed to act to prevent 22 them.” *Id.* Furthermore, supervisor defendants are entitled to qualified immunity where the 23 allegations against them are simply “bald” or “conclusory” because such allegations do not 24 “plausibly” establish the supervisors’ personal involvement in their subordinates’ constitutional 25 wrong. *Ashcroft v. Iqbal*, 556 U.S. 662, 676-83 (2009).

26 III. CONCLUSION

27 For the foregoing reasons, the court orders as follows: 1 Lockhart, Sanchez, Sullivan, Magna, and Dorr. 2 2. The court DISMISSES with leave to amend: (a) Plaintiff’s claim against the named 3 Defendants in their official capacities; (b) his claims against Defendants Borla, McDonald, Larr, 4 and Schoch; (c) his claims against the Doe Defendants; and (d) any claims of violations of his 5 Fifth, Sixth, and Fourteenth Amendment rights stemming from the December 15, 2022 search. 6 3. If Plaintiff chooses to file an amended complaint, he must file the amended 7 complaint within twenty-eight (28) days of the date of this Order. The amended complaint must 8 include the caption and civil case number used in this Order—Case No. 24-cv-04656-DMR 9 (PR)—and the words “AMENDED COMPLAINT” on the first page. He must use the court’s 10 complaint form and answer all the questions on the form in order for the action to proceed. 11 Because an amended complaint completely replaces the previous complaints, Plaintiff must 12 include in his amended complaint all the claims he wishes to present, including any amended 13 claims (i.e., correcting the aforementioned deficiencies of his above claims dismissed with leave to 14 amend) as well as his Eighth Amendment claim against Defendants Lockhart, Sanchez, Sullivan, 15 Magna, and Dorr, which the court has already found cognizable. See *Ferdik v. Bonzelet*, 963 F.2d 16 1258, 1262 (9th Cir. 1992). Plaintiff may not incorporate material from the prior complaint by 17 reference. Failure to file an amended complaint⁴ in accordance with this Order in the time 18 provided will result in the following: (1) the dismissal of (a) Plaintiff’s claim against the named 19 Defendants in their official capacities, (b) his claims against Defendants Borla, McDonald, Larr, 20 and Schoch, (c) his claims against the Doe Defendants without prejudice to Plaintiff filing new 21 actions against them once their names are known, and (d) any claims of violations of his Fifth, 22 Sixth, and Fourteenth Amendment rights stemming from the December 15, 2022 search; (2) the

23 initial complaint (Dkt. 1 (sealed)) remaining the operative complaint; and (3) this action 24 proceeding in accordance with this Order. 25 4. The Clerk of the Court shall serve the following Defendants at CTF: 26 a. Sergeant D. Lockhart; and 27 1 b. Correctional Officers S. Sanchez, T. Sullivan, Magna, and Dorr. 2 Service on the listed defendants shall proceed under the California Department of Corrections and 3 Rehabilitation's ("CDCR") e-service pilot program for civil rights cases from prisoners in CDCR 4 custody. In accordance with the program, the Clerk is directed to serve on CDCR via email the 5 following documents: this order of service, a CDCR Report of E-Service Waiver form and a 6 summons. Defendant(s) and/or counsel for Defendant(s) shall contact the Clerk to inquire 7 about the procedure to gain access to the sealed operative complaint, which the court 8 GRANTS Defendant(s) and/or counsel for defendant(s) access to. See Dkt. 1 (sealed). The 9 Clerk shall serve by mail a copy of this Order on Plaintiff. 10 No later than forty (40) days after service of this Order via email on CDCR, CDCR shall 11 provide the court a completed CDCR Report of E-Service Waiver advising the court if the 12 defendant(s) listed in this Order will be waiving service of process without the need for service by 13 the United States Marshal Service ("USMS") or if defendant(s) will decline to waive service or 14 could not be reached. CDCR also shall provide a copy of the CDCR Report of E-Service Waiver 15 and of the notice of assignment of prisoner case to a magistrate judge and accompanying 16 magistrate judge jurisdiction consent or declination to consent form to the California Attorney 17 General's Office, which, within twenty-one (21) days, shall file with the court a waiver of service 18 of process for any defendant(s) who are waiving service and, within twenty-eight (28) days 19 thereafter, shall file a magistrate judge jurisdiction consent or declination to consent form as to any 20 defendant(s) who waived service. 21 Upon receipt of the CDCR Report of E-Service Waiver, the Clerk shall prepare for each 22 defendant who has not waived service according to the CDCR Report of E-Service Waiver a 23 USM-285 form. The Clerk shall provide to the USMS the completed USM-285 form and copies 24 of this Order, summons, operative complaint and notice of assignment of prisoner case to a 25 magistrate judge and accompanying magistrate judge jurisdiction consent or declination to consent 26 form for service upon each defendant who has not waived service. The Clerk also shall provide to 27 the USMS a copy of the CDCR Report of E-Service Waiver. 1 of Civil Procedure. The following briefing schedule shall govern dispositive motions in this 2 action: 3 a. No later than sixty (60) days from the date their answer is due, the 4 defendant(s) shall file a motion for summary judgment or other dispositive motion. The motion 5 must be supported by adequate factual documentation, must conform in all respects to Federal 6 Rule of Civil Procedure 56, and must include as exhibits all records and incident reports stemming 7 from the events at issue. A motion for summary judgment also must be accompanied by a Rand5 8 notice so that the plaintiff will have fair, timely and adequate notice of what is required of him in 9 order to oppose the motion. *Woods v. Carey*, 684 F.3d 934, 935 (9th Cir. 2012) (notice 10 requirement set out in *Rand* must be served concurrently with motion for summary judgment). A 11 motion to dismiss for failure to exhaust available administrative remedies must be accompanied

by 12 a similar notice. However, the court notes that under this Circuit's case law, in the rare event that 13 a failure to exhaust is clear on the face of the complaint, the defendant(s) may move for dismissal 14 under Rule 12(b)(6) as opposed to the previous practice of moving under an unenumerated Rule 15 12(b) motion. *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (overruling *Wyatt v. Terhune*, 16 315 F.3d 1108, 1119 (9th Cir. 2003), which held that failure to exhaust available administrative 17 remedies under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), should be raised by a 18 defendant as an unenumerated Rule 12(b) motion). Otherwise, if a failure to exhaust is not clear 19 on the face of the complaint, the defendant(s) must produce evidence proving failure to exhaust in 20 a motion for summary judgment under Rule 56. *Id.* If undisputed evidence viewed in the light 21 most favorable to the plaintiff shows a failure to exhaust, the defendant(s) shall be entitled to 22 summary judgment under Rule 56. *Id.* But if material facts are disputed, summary judgment 23 should be denied and the district judge rather than a jury should determine the facts in a 24 preliminary proceeding. *Id.* at 1168. 25 If the defendant(s) should have the opinion that this case cannot be resolved by summary 26 judgment, the defendant(s) shall so inform the court at least seven (7) days prior to the date the 27 1 summary judgment motion is due. All papers filed with the court shall be promptly served on the 2 plaintiff. 3 b. The plaintiff's opposition to the dispositive motion shall be filed with the 4 court and served on the defendant(s) no later than twenty-eight (28) days after the date on which 5 the motion of defendant(s) is filed. 6 c. The plaintiff is advised that a motion for summary judgment under Rule 56 7 of the Federal Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you 8 must do in order to oppose a motion for summary judgment. Generally, summary judgment must 9 be granted when there is no genuine issue of material fact—that is, if there is no real dispute about 10 any fact that would affect the result of your case, the party who asked for summary judgment is 11 entitled to judgment as a matter of law, which will end your case. When a party you are suing 12 makes a motion for summary judgment that is properly supported by declarations (or other sworn 13 testimony), you cannot simply rely on what your complaint says. Instead, you must set out 14 specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, 15 as provided in Rule 56(c), that contradict the facts shown in the declarations of defendant(s) and 16 documents and show that there is a genuine issue of material fact for trial. If you do not submit 17 your own evidence in opposition, summary judgment may be entered against you. If summary 18 judgment is granted, your case will be dismissed and there will be no trial. *Rand*, 154 F.3d at 962- 19 63. 20 The plaintiff also is advised that—in the rare event that the defendant(s) shall raise the 21 argument that the failure to exhaust is clear on the face of the complaint—a motion to dismiss for 22 failure to exhaust available administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, 23 end your case, albeit without prejudice. To avoid dismissal, you have the right to present any 24 evidence to show that you did exhaust your available administrative remedies before coming to 25 federal court. Such evidence may include: (1) declarations, which are statements signed under 26 penalty of perjury

by you or others who have personal knowledge of relevant matters; 27 (2) authenticated documents—documents accompanied by a declaration showing where they came 1 depositions; (3) statements in your complaint insofar as they were made under penalty of perjury 2 and they show that you have personal knowledge of the matters state therein. As mentioned 3 above, in considering a motion to dismiss for failure to exhaust under Rule 12(b)(6) or failure to 4 exhaust in a summary judgment motion under Rule 56, the district judge may hold a preliminary 5 proceeding and decide disputed issues of fact with regard to this portion of the case. Albino, 747 6 F.3d at 1168. 7 (The notices above do not excuse the obligation of defendant(s) to serve similar notices 8 again concurrently with motions to dismiss for failure to exhaust available administrative remedies 9 and motions for summary judgment. Woods, 684 F.3d at 935.) 10 d. The defendant(s) shall file a reply brief no later than fourteen (14) days 11 after the date the plaintiff's opposition is filed. 12 e. The summary judgment motion shall be deemed submitted as of the date the 13 reply brief is due. No hearing will be held on the motion unless the court so orders at a later date. 14 6. Discovery may be taken in this action in accordance with the Federal Rules of Civil 15 Procedure. Leave of the court pursuant to Rule 30(a)(2) is hereby granted to the defendant(s) to 16 depose the plaintiff and any other necessary witnesses confined in prison. 17 7. All communications by the plaintiff with the court must be served on the counsel of 18 defendant(s) by mailing a true copy of the document to them. 19 8. It is the plaintiff's responsibility to prosecute this case. The plaintiff must keep the 20 court informed of any change of address and must comply with the court's orders in a timely 21 fashion. Pursuant to Northern District Local Rule 3-11, a self-represented party whose address 22 changes while an action is pending must promptly file a notice of change of address specifying the 23 new address. See L.R. 3-11(a). The court may dismiss without prejudice a complaint when: 24 (1) mail directed to the self-represented party by the court has been returned to the court as not 25 deliverable, and (2) the court fails to receive within sixty days of this return a written 26 communication from the self-represented party indicating a current address. See L.R. 3-11(b). 27 9. Upon a showing of good cause, requests for a reasonable extension of time will be 1 10. The Clerk shall include a copy of a blank complaint form with a copy of this Order 2 to the plaintiff. 3 IT IS SO ORDERED. 4 Dated: July 29, 2025 5

DONNA M. RYU

6 Chief Magistrate Judge 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27