

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Dunbar v. Coffman

No. 24-cv-08898-AMO (PR), Order of Partial Dismissal with Leave to Amend; and Serving Cognizable Claim
(N.D. Cal. June 17, 2025) · No. 24-cv-08898-AMO (PR) · Decided June 17, 2025

SUMMARY

The United States District Court for the Northern District of California screened Eddie Dunbar’s prisoner civil-rights complaint under 28 U.S.C. § 1915A. The court found a cognizable Eighth Amendment conditions-of-confinement claim against K. Coffman, J. Sweet, and L. Deters based on the plaintiff’s placement on contraband watch, while dismissing the Fourteenth Amendment due-process and First Amendment claims with leave to amend. The court ordered service of the cognizable claim and set deadlines and procedures for amendment, dispositive motions, discovery, and service.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Araceli Martinez-Olguin
JURISDICTION	United States District Court for the Northern District of California
DECIDED	June 17, 2025
DOCKET	24-cv-08898-AMO (PR)
DISPOSITION	other
PROCEDURAL POSTURE	Initial screening of a pro se state-prisoner complaint under 28 U.S.C. § 1915A.
STANDARD OF REVIEW	The court conducted mandatory preliminary screening under 28 U.S.C. § 1915A, accepting the complaint's factual allegations as true and liberally construing the pro se pleading to determine whether it stated cognizable claims.
PRECEDENTIAL VALUE	unpublished and nonprecedential district-court order
PARTIES	Eddie Dunbar v. K. Coffman, J. Sweet, L. Deters

TOPICS

- section 1983
- prisoners rights
- cruel and unusual punishment
- first amendment
- procedural due process

PRACTICE AREAS

civil rights

prisoner litigation

constitutional law

civil procedure

remedies

QUESTIONS PRESENTED

1. Whether Dunbar's allegations concerning the conditions of his confinement on contraband watch stated a cognizable Eighth Amendment claim.
2. Whether Dunbar stated a Fourteenth Amendment due-process claim based on his placement on contraband watch when no disciplinary violation was issued.
3. Whether Dunbar stated a First Amendment retaliation claim based on alleged harassment and contraband-watch conduct.
4. Whether Dunbar stated a First Amendment free-exercise claim based on being required to break his Ramadan fast during contraband watch.
5. Whether the cognizable claim should proceed to service and whether the deficient claims should be dismissed with leave to amend.

HOLDINGS

1. Liberally construed, Dunbar's allegations that he was confined under degrading and restrictive contraband-watch conditions, including having clothing taped to his body, being handcuffed while defecating in front of officials, and having his confinement prolonged when officials rejected fecal matter, stated a cognizable Eighth Amendment claim against Coffman, Sweet, and Deters.
2. Dunbar failed to state a Fourteenth Amendment due-process claim because he alleged no disciplinary violation and did not identify a deprivation triggering the procedural protections applicable to prison disciplinary proceedings; the claim was dismissed with leave to amend.
3. Dunbar failed to state a First Amendment retaliation claim because his allegations were conclusory and did not show that Sweet's conduct was taken because of protected activity, chilled his exercise of First Amendment rights, or lacked a legitimate correctional purpose; the claim was dismissed with leave to amend.
4. Dunbar failed to state a cognizable free-exercise claim because he did not identify a named defendant who denied his religious rights and did not adequately allege that the conduct substantially burdened a religious mandate without a reasonable relationship to legitimate penological interests; the claim was dismissed with leave to amend.
5. Section 1983 liability requires a constitutional deprivation caused by an individual acting under color of state law, and supervisory liability requires personal involvement or a sufficient causal connection; respondeat superior liability is unavailable.

KEY QUOTATIONS

"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." (at 2)

“The Constitution does not mandate comfortable prisons, but neither does it permit inhumane ones.” (at 4)

“Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal.” (at 7)

FACTUAL BACKGROUND

Dunbar, a California state prisoner, alleged that while being released from administrative segregation at Pelican Bay State Prison, Officer Coffman accused him of concealing drugs in his intestines based on an alleged x-ray. Coffman and Lieutenant Sweet allegedly threatened to return him to segregation and use force, after which Dunbar was placed on contraband watch for two or three days in a small cell, with clothing taped to his body and restrictions on when he could leave the cell. During the watch, officials allegedly required him to consume food despite his Ramadan fast, forced him to defecate while handcuffed and observed by officials, and sometimes rejected the fecal matter as insufficient, prolonging the confinement. A later examination allegedly found no drugs or contraband, and no disciplinary violation was issued.

PROCEDURAL HISTORY

Eddie Dunbar filed a pro se action under 42 U.S.C. § 1983 seeking monetary and punitive damages for alleged constitutional violations at Pelican Bay State Prison. On initial review, the court found an Eighth Amendment conditions-of-confinement claim cognizable against Coffman, Sweet, and Deters, dismissed the Fourteenth Amendment due-process claim and First Amendment retaliation and free-exercise claims with leave to amend, and directed service of the cognizable claim.

DISPOSITION

other

CASES CITED

- *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1988)
- *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, 93-94 (2007)
- *Hutchinson v. United States*, 677 F.2d 1322, 1328 n.5 (9th Cir. 1982)

- Farmer v. Brennan, 511 U.S. 825, 832, 834, 837 (1994)
- Wilson v. Seiter, 501 U.S. 294, 297-98, 302-03 (1991)
- Sandin v. Conner, 515 U.S. 472, 484, 487 (1995)
- Wolff v. McDonnell, 418 U.S. 539, 564-67 (1974)
- Superintendent v. Hill, 472 U.S. 445, 454 (1985)
- Walker v. Sumner, 14 F.3d 1415, 1419-20 (9th Cir. 1994)
- Bruce v. Ylst, 351 F.3d 1283, 1288 (9th Cir. 2003)
- Schroeder v. McDonald, 55 F.3d 454, 461 (9th Cir. 1995)
- Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005)
- Freeman v. Arpaio, 125 F.3d 732, 736-37 (9th Cir. 1997)
- Graham v. C.I.R., 822 F.2d 844, 851 (9th Cir. 1987)
- Peterson v. Minidoka County School District, 118 F.3d 1351, 1357 (9th Cir. 1997)
- O'Lone v. Estate of Shabazz, 482 U.S. 342, 349 (1987)
- Mayweathers v. Newland, 258 F.3d 930, 937-38 (9th Cir. 2001)
- 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) (en banc)
- 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

1 2 3 4 5 UNITED STATES DISTRICT COURT 6 NORTHERN DISTRICT OF CALIFORNIA 7
 8 EDDIE DUNBAR, Case No. 24-cv-08898-AMO (PR) 9 Plaintiff, ORDER OF PARTIAL
 DISMISSAL 10 v. WITH LEAVE TO AMEND; AND SERVING COGNIZABLE CLAIM 11 K.
 COFFMAN, et al., Defendants. 12 13 I. INTRODUCTION 14 Plaintiff Eddie Dunbar, a state
 prisoner currently incarcerated at Kern Valley State Prison, 15 has filed a civil rights action
 pursuant to 42 U.S.C. § 1983, representing himself and alleging 16 constitutional violations that
 took place at Pelican Bay State Prison ("PBSP"), where he was 17 previously incarcerated.

Dkt. 1. His motion for leave to proceed in forma pauperis will be 18 granted in a separate Order.
 Dkt. 2. 19 Dunbar names as Defendants the following PBSP employees: Correctional Officer K.
 20 Coffman; Correctional Lieutenant J. Sweet; and Correctional Captain L. Deters. Dkt. 1 at 2.1
 21 Dunbar seeks monetary and punitive damages. Id. at 3. 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 Dunbar's
 claims 24 in his complaint are alleged to have occurred at PBSP, 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 filing II. DISCUSSION 1 A. Standard of Review 2 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.

28 U.S.C. 4 § 1915A(a). In its review, the Court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *Id.* at § 1915A(b)(1), (2). 7 Pleadings submitted by self-represented plaintiffs must be liberally construed.

Balistreri v. Pacifica Police 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. 12 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, Dunbar states that on or about April 26, 2022, he was being released from 21 the administrative segregation unit back to general population when Defendant Coffman stated 22 that Dunbar “had drugs concealed in his intestines, allegedly observed through an x-ray scan.” 23 Dkt.

1 at 5. 24 Defendant Sweet “confronted [Dunbar] in a very small holding cell and asked [him] if he 25 was hiding drugs in his intestines.” Id. Dunbar states he denied hiding drugs in his intestines, and 26 he claimed that such an accusation was a result of “ongoing harassment” “due to [Dunbar] being 27 continuously oppressed, harassed, and provoked since arriving at [PBSP], and retaliation for filing 1 Dunbar that Defendant Coffman “would conduct another x-ray scan on [Dunbar] and [he] would 2 be placed back in segregation under contraband watch if the x-ray [confirmed it] or if the officials 3 assumed [he] had drugs in his intestines.” Id. Dunbar claims that he experienced “extreme 4 duress,” and he “let the officers know he had suicidal ideations.” Id. Dunbar alleges Defendants 5 Coffman and Sweet “threatened and prepared to use force on [Dunbar] to extract [him] from the 6 small holding cell in order to place [him] back in segregation under contraband watch.” Id. 7 Dunbar alleges that “[a]s a direct result of Defendant K. Coffman’s false claim,” he was 8 “placed on contraband watch and confined to a small cell without a bed until after 8 p.m. daily, for 9 two or three days.” Id. Dunbar claims he was “forced to remain with his undergarments and 10 clothing taped to his body, creating significant discomfort and indignity.” Id. at 5-6.

11 Dunbar also avers that during the time he was placed on contraband watch, he was also 12 “undergoing a religious fast for Ramadan, which the prison acknowledged and facilitated.” Id. at 13 6. However, unnamed prison officials required Dunbar “to consume food to produce the three 14 bowel movements mandated under contraband watch procedures, violating his religious rights.” 15 Id. Dunbar alleges he was “handcuffed and forced to sit on a handicap chair to defecate

in the 16 presence of several officials, which caused him extreme humiliation and distress.” Id. Dunbar 17 also alleges that “[d]espite [his] compliance, [unnamed] officials sometimes claimed the fecal 18 matter was insufficient and refused to count it, prolonging his confinement and psychological 19 suffering.” Id. 20 Dunbar alleges that “[u]pon further examination, it was determined that [he] had no drugs 21 or contraband in his intestines and the accusation was unfounded.” Id. Dunbar claims that 22 Defendants “acted with deliberate indifference and reckless disregard for [his] constitutional rights 23 by falsely accusing [him] without any legitimate basis.” Id. Dunbar claims that “Defendants J. 24 Sweet and L. Deters authorized the contraband watch without legitimate basis, and did not provide 25 [Dunbar] with any evidence or proper documentation, such as x-ray images....” Id. 26 As a result of Defendants’ actions, Dunbar alleges he “suffered physical, emotional, and 27 psychological harm, as well as damage to his religious practices and dignity.” Id. C. Legal Claims 1 Dunbar alleges the present action “arises under 42 U.S.C. § 1983 and the Eighth, 2 Fourteenth, and Fourth Amendments to the United States Constitution.” Dkt.

1 at 4. 3 1. Eighth Amendment 4 Plaintiff alleges that the conditions that he experienced while he was on contraband watch 5 amounted to cruel and unusual punishment in violation of the Eighth Amendment. Id. at 5-6. 6 Specifically, Dunbar alleges that Defendants violated his rights by “act[ing] with deliberate 7 indifference and reckless disregard for [his] constitutional rights” and falsely accused him of 8 hiding drugs in his intestines “without any legitimate basis.” Id. at 6.

9 The Constitution does not mandate comfortable prisons, but neither does it permit 10 inhumane ones. See *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). The Eighth Amendment 11 imposes duties on prison officials to provide all prisoners with the basic necessities of life such as 12 food, clothing, shelter, sanitation, medical care and personal safety. See id. A prison official 13 violates the Eighth Amendment when two requirements are met: (1) the deprivation alleged must 14 be, objectively, sufficiently serious, see id. at 834 (citing *Wilson v. Seiter*, 501 U.S. 294, 298 15 (1991)), and (2) the prison official possesses a sufficiently culpable state of mind, see id. (citing 16 *Wilson*, 501 U.S. at 297).

17 The requisite state of mind to establish an Eighth Amendment violation in prison- 18 conditions case is one of “deliberate indifference.” See *Wilson*, 501 U.S. at 302-03. A prison 19 official cannot be held liable under the Eighth Amendment for denying an inmate humane 20 conditions of confinement unless the standard for criminal recklessness is met, that is, the official 21 knows of and disregards an excessive risk to inmate health or safety.

See *Farmer*, 511 U.S. at 22 837. 23 In his complaint, Dunbar states the actions of Defendants Coffman, Sweet and Deters that 24 led to him being placed on contraband watch violated his Eighth Amendment rights because he 25 was “forced to remain with his undergarments and

clothes taped to his body” and “was handcuffed 26 and forced to sit on a handicap chair to defecate in the presence of several officials.” Dkt.

1 at 6. 27 Dunbar also alleges that certain unnamed officials “sometimes claimed the fecal matter was 1 insufficient and refused to count it,” which prolonged Dunbar’s contraband watch. Id. Finally, 2 Dunbar alleges that upon further examination, no drugs or contraband were found in his intestines. 3 Id. Liberally construed, Dunbar’s allegations—regarding the conditions of his confinement while 4 he was placed on contraband watch—state a cognizable Eighth Amendment claim against 5 Defendants Coffman, Sweet, and Deters.

6 2. Fourteenth Amendment Right to Due Process 7 In his complaint, Dunbar does not allege a specific violation of his Fourteenth Amendment 8 right. Dkt. 1 at 1-6. After Dunbar’s contraband watch, prison officials “determined that [he] had 9 no drugs or contraband in his intestines” and did not issue any disciplinary violations against him. 10 Id. at 6. 11 An inmate in California is entitled to due process before being disciplined when the 12 discipline imposed will inevitably affect the duration of his sentence or causes an “atypical and 13 significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Sandin v. 14 Conner*, 515 U.S. 472, 484, 484, 487 (1995).

The process due in such a prison disciplinary 15 proceeding includes written notice, time to prepare for the hearing, a written statement of decision, 16 allowance of witnesses and documentary evidence when not unduly hazardous, and aid to the 17 accused where the inmate is illiterate or the issues are complex. *Wolff v. McDonnell*, 418 U.S. at 18 564-67. Due process also requires that there be “some evidence” to support the disciplinary 19 decision.

Superintendent v. Hill, 472 U.S. 445 at 454. The Due Process Clause only requires that 20 prisoners be afforded those procedures mandated by *Wolff* and its progeny; it does not require that 21 a prison comply with its own, more generous procedures. See *Walker v. Sumner*, 14 F.3d 1415, 22 1419-20 (9th Cir. 1994). 23 As mentioned above, Dunbar does not allege a specific violation of his Fourteenth 24 Amendment rights, and no disciplinary violation was issued to him.

Dkt. 1 at 1-6. Thus, he 25 alleges no facts to establish liability for a due process violation on the part of Defendants. 26 Accordingly, his Fourteenth Amendment claim is DISMISSED with leave to amend if he 27 can do so in good faith. 3.

First Amendment 1 a. Retaliation 2 Of fundamental import to prisoners are their First Amendment 3 “right[s] to file prison grievances,” *Bruce v. Ylst*, 351 F.3d 1283, 1288 (9th Cir.2003), and to “pursue civil rights litigation in the courts,” 4 *Schroeder v. McDonald*, 55 F.3d 454, 461 (9th Cir.1995). Without those bedrock constitutional guarantees, inmates would be left with 5 no viable mechanism to remedy prison injustices.

And because purely retaliatory actions taken against a prisoner for having exercised 6 those rights necessarily undermine those protections, such actions violate the Constitution quite apart from any underlying misconduct 7 they are designed to shield.... Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: 8 (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that 9 such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate 10 correctional goal.

11 Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2008) (footnotes omitted). 12 Dunbar's complaint fails to state a claim for retaliation. See Dkt. 1 at 4-6. Dunbar lodges 13 a conclusory allegation that Defendant Sweet's actions of confronting him and asking him if he 14 was hiding drugs in his intestines represented "ongoing harassment" resulting from his "being 15 continuously oppressed, harassed, and provoked since arriving at [PBSP] and retaliated upon his 16 filing multiple grievances for misconduct and prison conditions." Dkt.

1 at 5. Dunbar does not 17 advance any facts to suggest that the allegedly retaliatory conduct by Defendants was directly in 18 response to Dunbar engaging in protected activity, specifically filing a grievance or a lawsuit or 19 threatening to file a grievance or a lawsuit.

Moreover, the complaint does not allege any facts that 20 would suggest a chilling effect on Dunbar. 21 Accordingly, Dunbar's retaliation claim is DISMISSED with leave to amend if he can in 22 good faith allege facts, subject to proof, that cure these pleading deficiencies. 23 If Dunbar chooses to amend his retaliation claim against Defendant Sweet, he must proffer 24 enough facts to state a plausible claim that Defendant Sweet took some adverse action against 25 Dunbar, that such action was a result of Dunbar's engaging in protected activity, and that such 26 action chilled his exercise of his First Amendment rights and did not reasonably advance a 27 legitimate correctional goal. b. Religious Rights 1 The First Amendment right to the free exercise of religion is violated where a defendant 2 burdens the practice of a prisoner's religion by preventing him from engaging in conduct 3 mandated by his faith, without any justification reasonably related to legitimate penological 4 interests.

See Freeman v. Arpaio, 125 F.3d 732, 736 (9th Cir. 1997). To reach the level of a 5 constitutional violation, "the interference with one's practice of religion 'must be more than an 6 inconvenience; the burden must be substantial and an interference with a tenet or belief that is 7 central to religious doctrine.'" Id. at 737 (quoting Graham v. C.I.R., 822 F.2d 844, 851 (9th Cir.

8 1987)). A prisoner may be inconvenienced in the practice of his or her faith so long as the 9 governmental conduct does not prohibit the prisoner from "participating in the mandates of his 10 religion." See id. The mandates of a religion are not merely what is minimally required of 11 adherents of a religion but include that which "the individual human being perceives to be the 12

requirement of the transhuman Spirit to whom he or she gives allegiance.” *Peterson v. Minidoka* 13 County School Dist., 118 F.3d 1351, 1357 (9th Cir.

1997). A prison regulation that impinges on 14 an inmate’s First Amendment rights is valid if it is reasonably related to legitimate penological 15 interests. See *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987). 16 Dunbar claims unnamed prison officials barred him from participating in Ramadan 17 because he was required to break his religious fast when he was forced to “consume food to 18 produce three bowel movements mandated under contraband watch procedures.” Dkt.

1 at 6. 19 Dunbar presents no specific allegations related to such a claim against any named Defendant other 20 than stating they were responsible for putting him on the contraband watch. Thus, his free 21 exercise of religion claim is DISMISSED with leave to amend. He must identify the specific 22 defendants who denied his religious rights and describe their actions.

For Dunbar to state a 23 cognizable First Amendment claim, he must also show that the alleged actions interfered with 24 conduct mandated by his faith and were not reasonably related to legitimate penological interests. 25 See *Mayweathers v. Newland*, 258 F.3d 930, 937-38 (9th Cir. 2001) (finding policy of disciplining 26 inmates for missing work assignment to attend Jumu’ah (Sabbath) services interfered with conduct 27 mandated by Muslim faith and was not reasonably related to legitimate penological interests).

III. CONCLUSION 1 For the foregoing reasons, the Court orders as follows: 2 1. Dunbar states a cognizable Eighth Amendment claim against Defendants Coffman, 3 Sweet, and Deters. 4 2. The Court DISMISSES with leave to amend Dunbar’s Fourteenth and First 5 Amendment claims. If Dunbar chooses to file an amended complaint, he must file the amended 6 complaint within twenty-eight (28) days of the date of this Order.

The amended complaint must 7 include the caption and civil case number used in this Order, Case No. 24-cv-8898-AMO (PR) and 8 the words “AMENDED COMPLAINT” on the first page. He must use the Court’s complaint 9 form and answer all the questions on the form in order for the action to proceed.

Because an 10 amended complaint completely replaces the previous complaints, Dunbar must include in his 11 amended complaint all the claims he wishes to present, including any amended claims (i.e., his 12 Fourteenth and First Amendment claims) as well as the Eighth Amendment claim against 13 Defendants Coffman, Sweet, and Deters, which the Court has already found cognizable.

See 14 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Dunbar may not incorporate material 15 from the prior complaint by reference. Failure to file an amended complaint in accordance with 16 this Order in the time provided will result in the following: (1) the dismissal of his Fourteenth and 17 First Amendment claims; (2) the initial complaint (Dkt.

1) remaining the operative complaint; and 18 (3) this action proceeding in accordance with this Order. 19 3. The following defendant(s) shall be served at PBSP: 20 a. Correctional Officer K. Coffman; 21 b. Correctional Lieutenant J. Sweet; and 22 c. Correctional Captain L. Deters. 23 Service on the listed defendant(s) shall proceed under the California Department of 24 Corrections and Rehabilitation's ("CDCR") e-service pilot program for civil rights cases from 25 prisoners in CDCR custody.

In accordance with the program, the Clerk of the Court is directed to 26 serve on CDCR via email the following documents: the operative complaint, this order of service, 27 a CDCR Report of E-Service Waiver form and a summons.

The Clerk shall serve by mail a copy 1 of this order on the plaintiff. 2 No later than 40 days after service of this order via email on CDCR, CDCR shall provide 3 the court a completed CDCR Report of E-Service Waiver advising the court which defendant(s) 4 listed in this order will be waiving service of process without the need for service by the United 5 States Marshal Service (USMS) and which defendant(s) decline to waive service or could not be 6 reached.

CDCR also shall provide a copy of the CDCR Report of E-Service Waiver to the 7 California Attorney General's Office, which, within twenty-one (21) days, shall file with the court 8 a waiver of service of process for the defendant(s) who are waiving service. 9 Upon receipt of the CDCR Report of E-Service Waiver, the Clerk shall prepare for each 10 defendant who has not waived service according to the CDCR Report of E-Service Waiver a 11 USM-205 Form.

The Clerk shall provide to the USMS the completed USM-205 form and copies 12 of this order, summons, and operative complaint for service upon each defendant who has not 13 waived service. The Clerk also shall provide to the USMS a copy of the CDCR Report of E- 14 Service Waiver. 15 4. Defendants shall answer the complaint in accordance with the Federal Rules of 16 Civil Procedure.

The following briefing schedule shall govern dispositive motions in this action: 17 a. No later than sixty (60) days from the date their answer is due, the 18 defendants shall file a motion for summary judgment or other dispositive motion.

The motion 19 must be supported by adequate factual documentation, must conform in all respects to Federal 20 Rule of Civil Procedure 56, and must include as exhibits all records and incident reports stemming 21 from the events at issue. A motion for summary judgment also must be accompanied by a Rand2 22 notice so that the plaintiff will have fair, timely and adequate notice of what is required of him in 23 order to oppose the motion.

Woods v. Carey, 684 F.3d 934, 935 (9th Cir. 2012) (notice 24 requirement set out in Rand must be served concurrently with motion for summary judgment). A 25 motion to dismiss for failure to exhaust available administrative remedies must be accompanied by 26 a similar notice.

However, the Court notes that under this Circuit's case law, in the rare event that 27 1 a failure to exhaust is clear on the face of the complaint, the defendants may move for dismissal 2 under Rule 12(b)(6) as opposed to the previous practice of moving under an unenumerated Rule 3 12(b) motion. *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (overruling *Wyatt v. Terhune*, 4 315 F.3d 1108, 1119 (9th Cir.

2003), which held that failure to exhaust available administrative 5 remedies under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), should be raised by a 6 defendant as an unenumerated Rule 12(b) motion). Otherwise if a failure to exhaust is not clear on 7 the face of the complaint, the defendants must produce evidence proving failure to exhaust in a 8 motion for summary judgment under Rule 56.

Id. If undisputed evidence viewed in the light most 9 favorable to the plaintiff shows a failure to exhaust, the defendants are entitled to summary 10 judgment under Rule 56. Id. But if material facts are disputed, summary judgment should be 11 denied and the district judge rather than a jury should determine the facts in a preliminary 12 proceeding. Id. at 1168.

13 If the defendants are of the opinion that this case cannot be resolved by summary 14 judgment, the defendants shall so inform the Court at least seven (7) days prior to the date the 15 summary judgment motion is due. All papers filed with the Court shall be promptly served on the 16 plaintiff. 17 b. The plaintiff's opposition to the dispositive motion shall be filed with the 18 Court and served on the defendants no later than twenty-eight (28) days after the date on which 19 the defendants' motion is filed.

20 c. The plaintiff is advised that a motion for summary judgment under Rule 56 21 of the Federal Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you 22 must do in order to oppose a motion for summary judgment. Generally, summary judgment must 23 be granted when there is no genuine issue of material fact—that is, if there is no real dispute about 24 any fact that would affect the result of your case, the party who asked for summary judgment is 25 entitled to judgment as a matter of law, which will end your case.

When a party you are suing 26 makes a motion for summary judgment that is properly supported by declarations (or other sworn 27 testimony), you cannot simply rely on what your complaint says. Instead, you must set out 1 as provided in Rule 56(c), that contradict the facts shown in the defendants' declarations and 2 documents and show that there is a genuine issue of material fact for trial.

If you do not submit 3 your own evidence in opposition, summary judgment may be entered against you. If summary 4 judgment is granted, your case will be dismissed and there will be no trial. *Rand*, 154 F.3d at 962- 5 63. 6 The plaintiff also is advised that—in the rare event that the defendants argue that the 7 failure to exhaust is clear on the face of the complaint—a motion to

dismiss for failure to exhaust 8 available administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your case, albeit 9 without prejudice.

To avoid dismissal, you have the right to present any evidence to show that 10 you did exhaust your available administrative remedies before coming to federal court. Such 11 evidence may include: (1) declarations, which are statements signed under penalty of perjury by 12 you or others who have personal knowledge of relevant matters; (2) authenticated documents— 13 documents accompanied by a declaration showing where they came from and why they are 14 authentic, or other sworn papers such as answers to interrogatories or depositions; (3) statements 15 in your complaint insofar as they were made under penalty of perjury and they show that you have 16 personal knowledge of the matters state therein.

As mentioned above, in considering a motion to 17 dismiss for failure to exhaust under Rule 12(b) (6) or failure to exhaust in a summary judgment 18 motion under Rule 56, the district judge may hold a preliminary proceeding and decide disputed 19 issues of fact with regard to this portion of the case. Albino, 747 F.3d at 1168. 20 (The notices above do not excuse the defendants' obligation to serve similar notices again 21 concurrently with motions to dismiss for failure to exhaust available administrative remedies and 22 motions for summary judgment.

Woods, 684 F.3d at 935.) 23 d. The defendants shall file a reply brief no later than fourteen (14) days after 24 the date the plaintiff's opposition is filed. 25 e. The summary judgment motion shall be deemed submitted as of the date the 26 reply brief is due. No hearing will be held on the motion unless the Court so orders at a later date. 27 5. Discovery may be taken in this action in accordance with the Federal Rules of Civil 1 depose the plaintiff and any other necessary witnesses confined in prison.

2 6. All communications by the plaintiff with the Court must be served on the 3 defendants' counsel by mailing a true copy of the document to them. 4 7. It is the plaintiffs responsibility to prosecute this case. The plaintiff must keep the 5 Court informed of any change of address and must comply with the Court's orders in a timely 6 || fashion. Pursuant to Northern District Local Rule 3-11, a self-represented party whose address 7 changes while an action is pending must promptly file a notice of change of address specifying the 8 new address.

See L.R. 3-11(a). The Court may dismiss without prejudice a complaint when: 9 (1) mail directed to the self-represented party by the Court has been returned to the Court as not 10 || deliverable, and (2) the Court fails to receive within sixty days of this return a written 11 communication from the self-represented party indicating a current address. See L.R.

3-11(b). 12 8. Future requests for extensions of time must be submitted at least seven (7) days 13 || prior to the expiration of a deadline, as required by Section D.2 of the Court's Standing Order for 14 || Civil Cases. 15 9.

The Clerk shall include a copy of a blank complaint form with a copy of this Order a 16 || to the plaintiff. IT IS SO ORDERED. 18 || Dated: June 17, 2025 19 □ 1. ARACELI MARTINEZ-OLGUIN 21 United States District Judge 22 23 24 25 26 27 28

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