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

BYRON FRANKLIN, C-83733,	)	
	)	
Plaintiff(s),	)	No. C 10-4390 CRB (PR)
	)	
v.	)	ORDER OF SERVICE
	)	
RANDY GROUNDS, et al.,	)	
	)	
Defendant(s).	)	
_____	)	

Plaintiff, a prisoner at the Correctional Training Facility (CTF) in Soledad, California, has filed a pro se civil rights complaint under 42 U.S.C. § 1983 alleging inadequate medical care for a right thumb injury.

**DISCUSSION**

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." Id. § 1915A(b). Pro se pleadings must be liberally construed, however. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

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

6 B. Legal Claims

7 Deliberate indifference to serious medical needs violates the Eighth  
8 Amendment's proscription against cruel and unusual punishment. See Estelle v.  
9 Gamble, 429 U.S. 97, 104 (1976). Such indifference may appear when prison  
10 officials deny, delay or intentionally interfere with medical treatment, or it may  
11 be shown in the way in which prison officials provide medical care. See  
12 McGuckin v. Smith, 974 F.2d 1050, 1062 (9th Cir. 1992) (delay of seven months  
13 in providing medical care during which medical condition was left virtually  
14 untreated and plaintiff was forced to endure "unnecessary pain" sufficient to  
15 present colorable § 1983 claim), overruled on other grounds, WMX  
16 Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc).  
17 Liberally construed, plaintiff's allegations that defendants provided him with  
18 inadequate medical care for a right thumb injury, resulting in his being in pain for  
19 a prolonged period of time and in further injury to his thumb, present a colorable  
20 § 1983 claim for deliberate indifference to serious medical needs and will be  
21 served on the named defendants.

22 **CONCLUSION**

23 For the foregoing reasons and for good cause shown,

24 1. The clerk shall issue summons and the United States Marshal shall  
25 serve, without prepayment of fees, copies of the complaint in this matter, all  
26 attachments thereto, and copies of this order on the named defendants. The clerk  
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1 also shall serve a copy of this order on plaintiff.

2 2. In order to expedite the resolution of this case, the court orders as  
3 follows:

4 a. No later than 90 days from the date of this order, defendants  
5 shall file a motion for summary judgment or other dispositive motion. A motion  
6 for summary judgment shall be supported by adequate factual documentation and  
7 shall conform in all respects to Federal Rule of Civil Procedure 56, and shall  
8 include as exhibits all records and incident reports stemming from the events at  
9 issue. If defendants are of the opinion that this case cannot be resolved by  
10 summary judgment or other dispositive motion, they shall so inform the court  
11 prior to the date their motion is due. All papers filed with the court shall be  
12 served promptly on plaintiff.

13 b. Plaintiff's opposition to the dispositive motion shall be filed  
14 with the court and served upon defendants no later than 30 days after defendants  
15 serve plaintiff with the motion.

16 c. Plaintiff is advised that a motion for summary judgment  
17 under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your  
18 case. Rule 56 tells you what you must do in order to oppose a motion for  
19 summary judgment. Generally, summary judgment must be granted when there  
20 is no genuine issue of material fact--that is, if there is no real dispute about any  
21 fact that would affect the result of your case, the party who asked for summary  
22 judgment is entitled to judgment as a matter of law, which will end your case.  
23 When a party you are suing makes a motion for summary judgment that is  
24 properly supported by declarations (or other sworn testimony), you cannot simply  
25 rely on what your complaint says. Instead, you must set out specific facts in  
26 declarations, depositions, answers to interrogatories, or authenticated documents,  
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1 as provided in Rule 56(e), that contradicts the facts shown in the defendant's  
2 declarations and documents and show that there is a genuine issue of material  
3 fact for trial. If you do not submit your own evidence in opposition, summary  
4 judgment, if appropriate, may be entered against you. If summary judgment is  
5 granted, your case will be dismissed and there will be no trial. Rand v. Rowland,  
6 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc) (App A).

7 Plaintiff is also advised that a motion to dismiss for failure to exhaust  
8 administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your  
9 case, albeit without prejudice. You must “develop a record” and present it in  
10 your opposition in order to dispute any “factual record” presented by the  
11 defendants in their motion to dismiss. Wyatt v. Terhune, 315 F.3d 1108, 1120  
12 n.14 (9th Cir. 2003).

13 d. Defendants shall file a reply brief within 15 days of the date  
14 on which plaintiff serves them with the opposition.

15 e. The motion shall be deemed submitted as of the date the  
16 reply brief is due. No hearing will be held on the motion unless the court so  
17 orders at a later date.

18 3. Discovery may be taken in accordance with the Federal Rules of  
19 Civil Procedure. No further court order is required before the parties may  
20 conduct discovery.


21 4. All communications by plaintiff with the court must be served on  
22 defendants, or defendants' counsel once counsel has been designated, by mailing  
23 a true copy of the document to defendants or defendants' counsel.

24 5. It is plaintiff's responsibility to prosecute this case. Plaintiff must  
25 keep the court and all parties informed of any change of address and must comply  
26 with the court's orders in a timely fashion. Failure to do so may result in the  
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1 dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b).

2 SO ORDERED.

3 DATED: Feb. 24, 2011

  
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4 CHARLES R. BREYER  
5 United States District Judge  
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