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

GILBERTO SANCHEZ, No. C-10-4882 TEH (PR)
Plaintiff,
v. ORDER OF SERVICE
RANDY GROUNDS, WARDEN, et. al.,
Defendant(s).

_____ /

Plaintiff, a prisoner presently housed at the Correctional Training Facility ("CTF") in Soledad, California, has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging that Joseph Chudy, the Chief Medical Officer at CTF was deliberately indifferent to his serious medical needs. Doc. #1. The action is now before the Court for initial screening pursuant to 28 U.S.C. § 1915A.

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Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or

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1 officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
2 The court must identify cognizable claims or dismiss the complaint,
3 or any portion of the complaint, if the complaint "is frivolous,
4 malicious, or fails to state a claim upon which relief may be
5 granted," or "seeks monetary relief from a defendant who is immune
6 from such relief." Id. § 1915A(b). Pleadings filed by pro se
7 litigants, however, must be liberally construed. Hebbe v. Pliler,
8 627 F.3d 338, 341-42 (9th Cir. 2010); Balistreri v. Pacifica Police
9 Dep't., 901 F.2d 696, 699 (9th Cir. 1990).

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

15 Deliberate indifference to serious medical needs violates
16 the Eighth Amendment's proscription against cruel and unusual
17 punishment. Estelle v. Gamble, 429 U.S. 97, 104 (1976). A "serious
18 medical need" exists if the failure to treat a prisoner's condition
19 could result in further significant injury or the "unnecessary and
20 wanton infliction of pain." McGuckin v. Smith, 974 F.2d 1050, 1059
21 (9th Cir. 1992) (citing Estelle, 429 U.S. at 104), overruled in part
22 on other grounds by WMX Technologies, Inc. v. Miller, 104 F.3d 1133,
23 1136 (9th Cir. 1997) (en banc). A prison official is "deliberately
24 indifferent" if he knows that a prisoner faces a substantial risk of
25 serious harm and disregards that risk by failing to take reasonable
26 steps to abate it. Farmer v. Brennan, 511 U.S. 825, 837 (1994).

1 exhibits all records and incident reports stemming from the events
2 at issue. If Defendants are of the opinion that this case cannot be
3 resolved by summary judgment or other dispositive motion, they shall
4 so inform the Court prior to the date their motion is due. All
5 papers filed with the Court shall be served promptly on Plaintiff.

6 b. Plaintiff's opposition to the dispositive motion
7 shall be filed with the Court and served upon Defendants no later
8 than thirty (30) days after Defendants serve Plaintiff with the
9 motion.

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

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

12 d. Defendants shall file a reply brief within
13 fifteen (15) days of the date on which Plaintiff serves them with
14 the opposition.

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

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

21 5. All communications by Plaintiff with the Court must
22 be served on Defendants, or Defendants' counsel once counsel has
23 been designated, by mailing a true copy of the document to
24 Defendants or Defendants' counsel.

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

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5 IT IS SO ORDERED.

6
7 DATED

02/22/2011



THELTON E. HENDERSON
United States District Judge