

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

3 NAPOLEON SANDEFORD,

No. C 06-06794 SBA (PR)

4 Plaintiff,

**ORDER REVIEWING AMENDMENT TO
THE COMPLAINT; ORDERING
SERVICE OF COGNIZABLE CLAIMS;
DISMISSING NON-COGNIZABLE
CLAIMS; AND ADDRESSING PENDING
MOTIONS**

5 v.

6 CHARLES PLUMMER, et al.,

7
8 Defendants.
9 _____/

10 On December 18, 2007, the Court issued an "Order of Partial Dismissal, Serving Due
11 Process Claim, and Dismissing Remaining Claims with Leave to Amend." The Court found that
12 Plaintiff's allegations against the United States Marshals Service failed to state a cognizable claim
13 under Bivens v. Six Unknown Agents, 403 U.S. 388 (1971), and dismissed that claim. The Court
14 determined that Plaintiff's allegations presented a cognizable claim for the denial of due process
15 against Defendant Morrison stemming from a December 31, 2005 write up resulting in a thirty-day
16 loss of privileges without a disciplinary hearing, and served Defendant Morrison with a summons
17 and complaint. All claims against any Doe Defendants were dismissed from this action without
18 prejudice. Finally, Plaintiff was directed to amend his religious freedom, supervisory liability and
19 equal protection claims by filing an amendment to the complaint. He was warned the failure to do
20 so would result in dismissal of the aforementioned claims without prejudice.

21 On January 25, 2008, Plaintiff filed his amendment to the complaint.

22 On August 5, 2008, Defendant Morrison filed a motion for summary judgment.

23 In an Order dated February 25, 2009, the Court granted summary judgment as to all claims
24 against Defendant Morrison, including (1) Plaintiff's first set of claims stemming from Defendant
25 Morrison's failing to give him notice that he would receive an incident report, and denying him the
26 right to a hearing and his right to call witnesses to that hearing; and (2) Plaintiff's second set of
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1 claims stemming from his allegations that Defendant Morrison tried to make him eat a meal that was
2 unfit according to his Sunni Muslim religion.¹

3 The Court now reviews Plaintiff's remaining amended religious freedom, supervisory
4 liability and equal protection claims.²

5 **I. Claims Against Defendants Alameda County Sheriff's Office and Sheriff Charles**
6 **Plummer**

7 In its December 18, 2007 Order, the Court gave the following background for Plaintiff's
8 religious freedom claim:

9 Plaintiff alleges that the jail staff, who he names as Defendant Alameda County
10 Sheriff's Office, violated his right to free exercise of religion. Specifically, he contends
11 that they failed to grant his request for an "Islamic Diet," access to Islamic religious

12 ¹ In his amendment to the complaint, Plaintiff attempts to amend his claims against
13 Defendant Morrison; however, the Court has already found that Defendant Morrison is entitled to
14 summary judgment on all claims. Therefore, the Court need not address Plaintiff's amended claims
15 against Defendant Morrison. In addition, Plaintiff names "L.T.C. Kennedy" as a Defendant based
16 on the fact that Defendant Kennedy denied a grievance involving Defendant Morrison. (Am. to
17 Compl. at 3.) First, Plaintiff was not granted leave to amend his complaint to add new claims
18 against Defendant Kennedy. Second, even if he was granted leave to do so, the Court notes that
19 although there is a First Amendment right to petition government for redress of grievances, there is
20 no right to a response or any particular action. See Flick v. Alba, 932 F.2d 728 (8th Cir. 1991)
21 ("prisoner's right to petition the government for redress . . . is not compromised by the prison's
22 refusal to entertain his grievance"). Plaintiff has therefore failed to state a claim against Defendant
23 Kennedy. Accordingly, the Court need not address Plaintiff's new claims against Defendant
24 Kennedy.

25 ² The Court will not consider any of Plaintiff's allegations against newly-named Defendants
26 Ditzenberger, Beachamp and McCarthy because he was not granted leave to amend his complaint to
27 add new claims against these Defendants. Even if he was granted leave to do so, Plaintiff alleges
28 that these Defendants were either involved in the denial of his due process rights stemming from a
hearing on a July 11, 2005 write up "for failure to follow instructions rules and disrespect" or in the
denial of his grievances in February, 2006. (Am. to Compl. at 3-4.) The Court again notes that
there is no right to a response to grievances or to any particular action. See Flick, 932 F.2d at 728.
Plaintiff adds that he requests "a declaratory judgment" against these Defendants based on the
"physical abuse of Plaintiff" based on a violation of his rights "under the Eighth Amendment." (Am.
to Compl. at 6.) However, Plaintiff makes a conclusory allegation without any factual basis to
support an Eighth Amendment violation. Plaintiff also requests compensatory and punitive damages
against these defendants "for the physical and emotional injuries sustained as a result of . . . [his]
denial [sic] of religious right, and due process of hearing procedure." (Id.) Plaintiff has not stated
any allegations in his amendment that link these Defendants to his religious freedom claim.
Furthermore, as mentioned above, Plaintiff's original complaint contained a due process claim
against Defendant Morrison stemming from a hearing on a December 31, 2005 write up. Any new
claims dealing with the denial of due process stemming from a hearing on a July 11, 2005 write up
should be raised in a new civil rights action. Therefore, such claims against Defendants
Ditzenberger, Beachamp and McCarthy should be raised in a new civil rights action.

1 services, and permission to wear a Kufi cap.³ Plaintiff also alleges that during
2 Ramadan they failed to deliver meals prior to sunrise, in accordance with Ramadan
3 custom, and denied him "Eid," a final meal that "culminates and signifies the end of the
4 holy month." Finally, he alleges that the jail staff sent a memo stating that the
5 Ramadan celebration had ended; however, he claims this was a few days before it
6 officially ended.

7 (Dec. 18, 2007 Order at 6 (footnote in original).) The Court also gave the following background on
8 his equal protection claim: "Plaintiff claims that his rights under the Equal Protection Clause were
9 violated because jail staff denied a request that "[he] and other Muslim inmates be allowed to wear
10 approved head dress [sic] (Kufi) caps, where similar head dress [sic] was allowed by staff for Jewish
11 inmates." (*Id.* at 7.)

12 The Court determined that, liberally construed, Plaintiff's allegations stated a cognizable
13 claim for the denial of the right to free exercise of his religion. (*Id.* at 7.) Liberally construed, the
14 Court also determined that Plaintiff's allegations support a claim for religious discrimination in
15 violation of his equal protection rights. However, the Court directed Plaintiff to name individual
16 members of the Alameda County Sheriff's Office and link them to his religious freedom and equal
17 protection claims by explaining what each defendant did that caused a violation of his constitutional
18 rights. (*Id.* (citing *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988) (liability may be imposed on
19 individual defendant under § 1983 only if plaintiff can show that defendant proximately caused
20 deprivation of federally protected right)).) Accordingly, the aforementioned claims were dismissed
21 with leave to amend his complaint to cure the pleading deficiencies.

22 The First Amendment protects unfamiliar and idiosyncratic as well as commonly recognized
23 religions. See *Alvarado v. City of San Jose*, 94 F.3d 1223, 1230 (9th Cir. 1996). An inmate who
24 adheres to a minority religion must be afforded a "reasonable opportunity" to exercise his religious
25 freedom. See *Cruz v. Beto*, 405 U.S. 319, 322 & n.2 (1972). In order to establish a free exercise
26 violation, a prisoner must show the defendants burdened the practice of his religion by preventing
27 him from engaging in conduct mandated by his faith without any justification reasonably related to
28 legitimate penological interests. See *Freeman v. Arpaio*, 125 F.3d 732, 736 (9th Cir. 1997)
abrogated on other grounds by *Shakur v. Schriro*, 514 F.3d 878, 884-85 (9th Cir. 2008). To reach

³ A Kufi cap is a Muslim prayer cap.

1 the level of a constitutional violation, "the interference with one's practice of religion 'must be more
2 than an inconvenience; the burden must be substantial and an interference with a tenet or belief that
3 is central to religious doctrine.'" Freeman, 125 F.3d at 737 (quoting Graham v. C.I.R., 822 F.2d 844,
4 851 (9th Cir. 1987) aff'd sub nom. Hernandez v. C.I.R., 490 U.S. 680 (1989)).

5 The Equal Protection Clause ensures that prison officials cannot discriminate against
6 particular religions. Freeman, 125 F.3d at 737. Plaintiff has the burden to show that officials
7 intentionally acted in a discriminatory manner to support a § 1983 claim. FDIC v. Henderson, 940
8 F.2d 465, 471 (9th Cir. 1991); Sischo-Nownejad v. Merced Community College Dist., 934 F.2d
9 1104, 1112 (9th Cir. 1991) (stating that discriminatory intent can sometimes be inferred by the mere
10 fact of different treatment) overruled on other grounds by Dominguez-Curry v. Nevada Trans. Dist.,
11 424 F.3d 1027 (9th Cir. 2005). The Ninth Circuit in Sischo-Nownejad stated:

12 The evidence may be either direct or circumstantial, and the amount that must be
13 produced in order to create a prima facie case is "very little." Normally, when such
14 evidence has been introduced, a court should not grant summary judgment to the
15 defendant on any ground relating to the merits. Even if the defendant articulates a
16 legitimate, nondiscriminatory reason for the challenged . . . decision, thus shifting the
17 burden to the plaintiff to prove that the articulated reason is pretextual, summary
18 judgment is normally inappropriate. When a plaintiff has established a prima facie
19 inference of disparate treatment through direct or circumstantial evidence of
20 discriminatory intent, he will necessarily have raised a genuine issue of material fact
21 with respect to the legitimacy or bona fides of the [defendant's] articulated reason for
22 its . . . decision. Specifically, in evaluating whether the defendant's articulated reason
23 is pretextual, the trier of fact must, at a minimum, consider the same evidence that the
24 plaintiff introduced to establish her prima facie case.

19 934 F.2d at 1110 (internal quotation marks and citations omitted).

20 In Plaintiff's amendment to the complaint, he alleges that Defendant Alameda County
21 Sheriff's Department failed to grant his request for an "Islamic Diet" as well as access to Islamic
22 religious services:

23 On April 25, 2005, plaintiff Sandeford contacted the medical staff at "Glendyer" North
24 Coutry jail "Alameda County Sheriff's Department and spoke to those in charge of the
25 "diet meals." The doctor in charge placed me on a[n] "Islamic diet" because [of] the
26 particular status of my faith, which is a Sunni Muslim. The Sheriff's Department
27 denied my [Muslim] diet, based upon reason[s] not substantiated by their own policy.
28 Although, officials informed me that Aramark Corporation does not serve Muslim
diets[,] Aramark is one of the largest catering companys [sic] in the bay area. Also,
plaintiff Sandeford requested to participate in Islamic services, which the Sheriff's dept.
denied, due to in adequate [sic] service established with the Sheriff's department.

1
2 (Am. to Compl. at 1.) Plaintiff then claims that "after denial of [his] request," presumably for his
3 request for a Muslim diet and to participate in Islamic services, he "proceeded with filing his
4 'grievance' with the County Sheriff's office." (Id.) The attached "Inmate Grievance Response"
5 dated May 15, 2005, which relates to these issues, states that his grievance was "DENIED." (May
6 15, 2005 Inmate Grievance Response.)

7 Plaintiff also states that during Ramadan, Defendant Alameda County Sheriff's Department
8 failed to deliver meals prior to sunrise, in accordance with Ramadan custom. He also includes his
9 equal protection claim that he was denied permission to wear a Kufi cap, while permitting other
10 religious groups to keep and use head coverings:

11 On July 10, 2005, plaintiff Sandeford requested assistance towards participating in the
12 commencement of fasting during the month of Ramadan. Plaintiff made his's [sic]
13 request sixty days in advanced [sic] prior to the actual date of the fasting. Plaintiff
14 Sandeford, respectfully argues that, program statement 4761.04, concerning (special
15 meals) for the month of Ramadan observance, gives county officials the right to prepare
16 for inmates participation in the Islamic fasting month of Ramadan, it's clear that the
17 Sheriff's department clearly violated their own program statement, and plaintiff
18 Sandeford constitutional rights of due process, and prejudice him, toward the
19 humiliation and disregard of his belief and practice as an incarcerated inmate at the
20 Alameda County Sheriff's Detention. Plaintiff Sandeford continue[d] to witness
21 prejudice from the Alameda County Sheriff's official based upon a request plaintiff
22 Sandeford made in regard to approval to wear an Islamic head gear, which is called a
23 (kufi). According to program statement 548.14, plaintiff Sandeford was denied
24 authorization to wear his's [sic] religious head gear, despite the fact other religious
25 groups were approved to wear head gear.

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20 (Am. to Compl. at 2.) Finally, Plaintiff states that he "requested counseling by a spiritual leader or
21 chaplain, which was not available, because the Alameda [County] Sheriff['s] department has failed
22 to contact religious leaders to participate in Islamic services, for the Muslims weekly Friday Islamic
23 service." (Id. at 5.) The attached "Inmate Grievance Response" dated July 15, 2005 relates to these
24 issues. It states that his grievance was denied as to the portion of his grievance relating to the
25 Ramadan meals because, "Inmates are served the appropriate meals needed for their dietary needs
26 during the observance of Ramadan." (July 15, 2005 Inmate Grievance Response.) It also states
27 that the portion of Plaintiff's grievance that related to his equal protection claims stemming from his
28 request for a Kufi cap was denied stating, "Due to security concerns, inmates are not given beads,

1 oils or headgear." (Id.) In regards to Plaintiff being denied Muslim services, that portion of the
2 grievance was "affirmed." The grievance stated, "it has been almost impossible to attain an [i]mam⁴
3 who is willing to perform Muslims [sic] services at the jail." (Id. (footnote added).) However,
4 Plaintiff was informed that if he knew of "any certified [i]mams that [were] willing to become a
5 volunteer for the incarcerated inmates," then Plaintiff should direct the imam to contact Inmate
6 Services. (Id.)

7 In order to correct the deficiencies in his original complaint, Plaintiff again names
8 Defendant Alameda County Sheriff Charles Plummer as another Defendant linked to his religious
9 freedom and equal protection claims: "The records that have been established by Plaintiff
10 Sandeford, will reflect upon the discrimination towards the belief and practice for incarcerated
11 Muslim in the Alameda County Detention, due to Sheriff Charles Plummer authority." (Am. to
12 Compl. at 5.) In his original complaint, Plaintiff sued Defendant Plummer in his supervisory
13 capacity because of Defendant Plummer's "'failure to direct or instruct his staff and subordinates in
14 proper procedures regarding due process fifth amend[ment] violations' and his 'failure to direct or to
15 instruct his staff and subordinates concerning religious practices. . . ." (Dec. 18, 2007 Order at 9.)
16 The Court directed Plaintiff to amend his supervisory liability claim against Defendant Plummer,
17 stating:

18 [Plaintiff] does not allege facts demonstrating that Defendant Plummer violated his
19 federal rights, but seems to claim Defendant Plummer is liable based on the conduct
20 of his subordinates. There is, however, no respondeat superior liability under § 1983
21 solely because a defendant is responsible for the actions or omissions of another. See
22 Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). A supervisor generally "is only
23 liable for constitutional violations of his subordinates if the supervisor participated in
24 or directed the violations, or knew of the violations and failed to act to prevent them."
25 Id. A supervisor may also be held liable if he or she implemented "a policy so
26 deficient that the policy itself is a repudiation of constitutional rights and is the
27 moving force of the constitutional violation." Redman, 942 F.2d at 1446.⁵

28 ⁴ Similar to spiritual leaders, the imam is the one who leads the prayer during Islamic
gatherings.

⁵ Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (citations and
internal quotations omitted), abrogated on other grounds by Farmer v. Brennan, 511 U.S. 825, 834
(1994).

1 (Id. (footnote added).)

2 As mentioned above, Plaintiff has continued to name the Alameda County Sheriff's
3 Department and Sheriff Plummer as Defendants in this action. Local and municipal governments
4 and their entities are "persons" subject to liability under 42 U.S.C. § 1983, but only where official
5 policy or custom causes a constitutional tort, see Monell v. Dep't of Social Servs., 436 U.S. 658,
6 690 (1978). A local government may also be liable for constitutional violations resulting from its
7 failure to supervise, monitor or train, where the inadequacy of said supervision, monitoring or
8 training amounts to deliberate indifference to the rights of the people with whom the local
9 government comes into contact. See City of Canton v. Harris, 489 U.S. 378, 388 (1989); Van Ort
10 v. Estate of Stanewich, 92 F.3d 831, 835 (9th Cir. 1996).

11 Liberally construed, the allegations of the amendment to the complaint state a claim for
12 relief under § 1983 against Defendant Alameda County Sheriff's Department as a municipal entity
13 that promulgated an official policy or custom or failed to train/supervise its employees, with such
14 action or inaction causing a violation of Plaintiff's rights to religious freedom and equal protection.
15 The amendment to the complaint also adequately pleads similar claims for relief under § 1983
16 against Defendant Plummer.

17 **II. Supervisory Liability Claim Against Defendant Wolf**

18
19 In its December 18, 2007 Order, the Court gave the following background relating to
20 Plaintiff's claim against Defendant Wolf stemming from the due process claim:

21 As a result of Officer Morrison filing an incident report and subsequent action by
22 Sergeant Wolf, without my being informed of the hearing or having an opportunity to
23 speak on my own behalf, or to defend my self [sic] against any allegations . . . I was
denied an important due process right in the disciplinary process.

24 (Dec. 18, 2007 Order at 8.) However, the Court dismissed with leave to amend Plaintiff's
25 supervisory liability claims against Defendant Wolf, stating:

26 Plaintiff has attached the Disciplinary Report dated December 31, 2005, which is at
27 issue in his due process claim. The Court notes that the record shows that Defendant
28 Morrison reported the verbal altercation involving Plaintiff to Sergeant Wolf. While
Plaintiff claims that there was "subsequent action by Sergeant Wolf," he does not
allege facts demonstrating that Defendant Wolf violated his federal rights, but seems

1 to claim Defendant Wolf is liable based on the conduct of Defendant Morrison. If
2 Defendant Wolf is being sued in his supervisory capacity, Plaintiff must allege facts
3 from which it could be established that Defendant Wolf was involved personally in
the alleged constitutional violation, or that there was a sufficient causal connection
between wrongful conduct by Defendant Wolf and the constitutional violation.

4 (Id. at 9.) Thus, the Court directed Plaintiff to reassert his supervisory liability claims against
5 Defendant Wolf if he can in good faith allege facts establishing a basis for supervisory liability.
6 Plaintiff has failed to do so in his amendment to the complaint. Furthermore, as mentioned above,
7 since Plaintiff filed his amendment the Court has determined that Defendant Morrison is entitled to
8 summary judgment on all claims against him. Thus, Defendant Wolf can no longer be held liable
9 based on the conduct of Defendant Morrison. Therefore, Plaintiff's supervisory liability claim
10 against Defendant Wolf is dismissed without further leave to amend.

11 **III. Plaintiff's Pending Motions**

12 Before the Court is Plaintiff's "Motion for Summary Judgment" (docket no. 40). Plaintiff
13 requests that this Court enter a default judgment against Defendants because they have not yet
14 answered the claims in the amendment to his complaint and thus he is entitled to a default
15 judgment. However, a default judgment cannot be entered unless the Clerk of the Court first enters
16 a default pursuant to Rule 55(a) of the Federal Rules of Civil Procedure. No such default has been
17 requested or entered in this case. Accordingly, Plaintiff's motion, which is construed as a motion
18 for a default judgment, is DENIED.

19 Also before the Court is Plaintiff's "Motion for Extension of Time to File Response and to
20 Find Attorney" (docket no. 42), which is construed as his second request for appointment of
21 counsel. Plaintiff's first request for appointment of counsel was denied in an Order dated May 19,
22 2009. At this time, the Court is still unable to assess at this time whether exceptional circumstances
23 exist which would warrant seeking volunteer counsel to accept a pro bono appointment. It is
24 premature for the Court to determine Plaintiff's likelihood of success on the merits. Moreover,
25 Plaintiff has been able to articulate his claims adequately pro se in light of the complexity of the
26 issues involved. See Agyeman v. Corrections Corp. of America, 390 F.3d 1101, 1103 (9th Cir.
27 2004). Accordingly, his second request for appointment of counsel at this time is DENIED. This
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1 does not mean, however, that the Court will not consider appointment of counsel at a later juncture
2 in the proceedings, that is, after the remaining Defendants have filed their dispositive motion and
3 the Court has a better understanding of the procedural and substantive matters at issue. Therefore,
4 Plaintiff may file a renewed motion for the appointment of counsel after the remaining Defendants'
5 dispositive motion has been filed. If the Court decides that appointment of counsel is warranted at
6 that time, then it can seek volunteer counsel to agree to represent Plaintiff pro bono.

7
8 **CONCLUSION**

9 For the foregoing reasons, the Court orders as follows:

10 1. The Court finds COGNIZABLE Plaintiff's religious freedom and equal protection
11 claims against Defendant Alameda County Sheriff's Department (municipal defendant) and
12 Defendant Plummer (supervisory defendant).

13 2. Plaintiff's supervisory liability claim against Defendant Wolf is dismissed without
14 further leave to amend.

15 3. The Clerk of the Court shall issue summons and the United States Marshal shall
16 serve, without prepayment of fees, a copy of the original complaint (docket no. 1) in this matter,
17 and a copy of this Order upon: **Alameda County Sheriff's Department and Alameda County**
18 **Sheriff Charles Plummer**. The Clerk shall also mail copies of these documents to the Alameda
19 County Counsel's Office. Additionally, the Clerk shall serve a copy of this Order on Plaintiff.

20 5. In order to expedite the resolution of this case, the Court orders as follows:

21 a. Defendants shall answer the complaint in accordance with the Federal Rules
22 of Civil Procedure. In addition, no later than **thirty (30) days** from the date their answer is due,
23 Defendants shall file a motion for summary judgment or other dispositive motion. The motion shall
24 be supported by adequate factual documentation and shall conform in all respects to Federal Rule of
25 Civil Procedure 56. If Defendants are of the opinion that this case cannot be resolved by summary
26 judgment, they shall so inform the Court prior to the date their summary judgment motion is due.

27 All papers filed with the Court shall be promptly served on Plaintiff.
28

1 b. Plaintiff's opposition to the dispositive motion shall be filed with the Court
2 and served on Defendants no later than **forty-five (45) days** after the date on which Defendants'
3 motion is filed. The Ninth Circuit has held that the following notice should be given to plaintiffs:

4 The Defendant has made a motion for summary judgment by which they
5 seek to have your case dismissed. A motion for summary judgment under Rule 56
of the Federal Rules of Civil Procedure will, if granted, end your case.

6 Rule 56 tells you what you must do in order to oppose a motion for summary
7 judgment. Generally, summary judgment must be granted when there is no genuine
8 issue of material fact -- that is, if there is no real dispute about any fact that would
9 affect the result of your case, the party who asked for summary judgment is entitled
10 to judgment as a matter of law, which will end your case. When a party you are
11 suing makes a motion for summary judgment that is properly supported by
12 declarations (or other sworn testimony), you cannot simply rely on what your
13 complaint says. Instead, you must set out specific facts in declarations, depositions,
14 answers to interrogatories, or authenticated documents, as provided in Rule 56(e),
15 that contradict the facts shown in the Defendants's declarations and documents and
16 show that there is a genuine issue of material fact for trial. If you do not submit your
17 own evidence in opposition, summary judgment, if appropriate, may be entered
18 against you. If summary judgment is granted [in favor of the Defendant], your case
19 will be dismissed and there will be no trial.

20 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc). Plaintiff is advised to read
21 Rule 56 of the Federal Rules of Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
22 (party opposing summary judgment must come forward with evidence showing triable issues of
23 material fact on every essential element of his claim). Plaintiff is cautioned that because he bears
24 the burden of proving his allegations in this case, he must be prepared to produce evidence in
25 support of those allegations when he files his opposition to Defendants' dispositive motion. Such
26 evidence may include sworn declarations from himself and other witnesses to the incident, and
27 copies of documents authenticated by sworn declaration. Plaintiff is advised that if he fails to
28 submit declarations contesting the version of the facts contained in Defendants' declarations,
Defendants' version may be taken as true and the case may be decided in Defendants' favor without
a trial. Plaintiff will not be able to avoid summary judgment simply by repeating the allegations of
his complaint.

 c. If Defendants wish to file a reply brief, they shall do so no later than **fifteen**
(15) days after the date Plaintiff's opposition is filed.

 d. The motion shall be deemed submitted as of the date the reply brief is due.

1 No hearing will be held on the motion unless the Court so orders at a later date.

2 6. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
3 Leave of Court pursuant to Rule 30(a)(2) is hereby granted to Defendants to depose Plaintiff and
4 any other necessary witnesses confined in prison.

5 7. All communications by Plaintiff with the Court must be served on Defendants, or
6 their counsel once counsel has been designated, by mailing a true copy of the document to
7 Defendants or their counsel.

8 8. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
9 informed of any change of address and must comply with the Court's orders in a timely fashion.
10 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal
11 Rule of Civil Procedure 41(b).

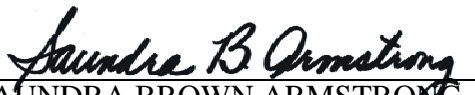
12 9. Extensions of time are not favored, though reasonable extensions will be granted.
13 However, the party making a motion for an extension of time is not relieved from his or her duty to
14 comply with the deadlines set by the Court merely by having made a motion for an extension of
15 time. The party making the motion must still meet the deadlines set by the Court until an order
16 addressing the motion for an extension of time is issued. Any motion for an extension of time must
17 be filed no later than **fifteen (15) days** prior to the deadline sought to be extended.
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19 10. Plaintiff's "Motion for Summary Judgment" (docket no. 40), which is construed as a
20 motion for a default judgment, is DENIED.

21 11. Plaintiff's "Motion for Extension of Time to File Response and to Find Attorney"
22 (docket no. 42), which is construed as his second request for appointment of counsel, is DENIED.

23 IT IS SO ORDERED.

24 DATED: 8/31/09

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26 SAUNDRA BROWN ARMSTRONG
27 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

NAPOLEON SANDEFORD,

Plaintiff,

Case Number: CV06-06794 SBA

CERTIFICATE OF SERVICE

v.

CHARLES PLUMMER et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 1, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Napoleon Sandeford 97606-011
United States Penitentiary (USP)
Cornell Corrections
111 Taylor Street
San Francisco, CA 94102

Dated: September 1, 2009

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk