

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

3 JUAN VILLA RAMIREZ,

No. C 07-04681 SBA (PR)

4 Plaintiff,

**ORDER DIRECTING UNITED STATES
MARSHAL TO SERVE DEFENDANTS
SQSP MEDICAL STAFF; AND SETTING
BRIEFING SCHEDULE**

5 v.

6 JAMES TILTON, et al.,

7 Defendants.
8 _____/

9 Plaintiff, a California prisoner incarcerated at San Quentin State Prison (SQSP), filed the
10 present pro se civil rights action pursuant to 42 U.S.C. § 1983 in which he asserted three claims for
11 relief against twenty-one Defendants, all officials and employees at SQSP and the California
12 Department of Corrections and Rehabilitation (CDCR). He seeks monetary damages and injunctive
13 relief.

14 In an Order dated March 5, 2010, the Court screened Plaintiff's complaint. The Court found
15 Plaintiff's allegation that SQSP medical staff failed to provide adequate medical treatment (for his
16 hemangiomas) stated a cognizable deliberate indifference claim against the following Defendants,
17 who are members of the SQSP medical staff: Defendants SQSP Physicians Sayer, Poluzza, Kholsla,
18 Tim Belavich and Donald Calvo; as well as SQSP Medical Technical Assistants (MTAs)
19 Hill-Culpepper, Guildersleeves, Morrow and Terranu. Plaintiff's claims concerning the handling of
20 his appeals were dismissed with prejudice. Plaintiff's claims under Title II of the Americans with
21 Disabilities Act of 1990 (ADA) and § 504 of the Rehabilitation Act of 1973 against Defendants who
22 are individual officers were dismissed with prejudice. The Court noted that if Plaintiff named SQSP
23 and the CDCR as Defendants, then his ADA and Section 504 claims against these public entities
24 were dismissed with leave to amend. The Court stated, "Plaintiff may reassert the claims in an
25 amendment to the complaint if he can in good faith allege that he is an individual with a disability
26 under the federal statutes, that the prison discriminated against him on the basis of his 'disability,'
27 and if he names the proper Defendants." (Mar. 5, 2010 Order at 5.) Finally, the Court noted that
28 none of the Defendants had been served; therefore, the Court directed Plaintiff, who paid the filing

1 fee in this matter, to "either provide the Court with proof of service of the summons and complaint
2 upon the Defendants against whom he alleges his deliberate indifference to serious medical needs
3 claim, or otherwise show cause why the complaint should not be dismissed without prejudice as to
4 each unserved Defendant pursuant to Rule 4(m) of the Federal Rules of Civil Procedure." (Id. at 7.)
5 Plaintiff was also directed to file an amendment to the complaint containing amended ADA and
6 Section 504 claims against SQSP and the CDCR. Plaintiff was given thirty days to: (1) file his
7 amendment to the complaint; and (2) show proof that he has served those Defendants against whom
8 he alleges his deliberate indifference to serious medical needs claim, or show cause why such
9 Defendants should not be dismissed from this action without prejudice.

10 In an Order dated April 15, 2010, the Court granted Plaintiff a brief extension of time to
11 respond to the Court's March 5, 2010 Order. The Court stated, "The time in which Plaintiff may:
12 (1) file his amendment to the complaint; and (2) either provide the Court with proof of service on
13 those Defendants against whom he alleges his deliberate indifference to serious medical needs
14 claim, or show cause why such Defendants should not be dismissed from this action without
15 prejudice, will be extended up to and including **May 10, 2010.**" (Apr. 15, 2010 at 2 (emphasis in
16 original).)

17 On April 20, 2010, the Court received a letter from Michael R. Snedeker and Lisa Short, the
18 attorneys who represented Plaintiff "on the automatic appeal of his death sentence." (Apr. 20, 2010
19 Letter at 1.) Mr. Snedeker states:

20 Ms. Short paid the filing fee because [Plaintiff] was not able to complete the
21 requisite papers in time (he is locked down because of an assessment by the prison
22 that he is a gang member), but in December of 2007, [Plaintiff] filed a motion to
proceed in forma pauperis [IFP], together with a supporting declaration.

23 (Apr. 20, 2010 Letter from Michael R. Snedeker at 1.) Mr. Snedeker asks the court to rule on
24 Plaintiff's IFP motion, and to amend its March 5, 2010 Order requiring Plaintiff to provide the Court
25 with proof of service of the summons and complaint upon Defendants.

26 Although the record reflects that Plaintiff has paid the requisite filing fee, Mr. Snedeker
27 correctly points out that Plaintiff originally moved to proceed IFP under 28 U.S.C. § 1915 as to all
28 other aspects of this case. Good cause shown, the motion to proceed IFP is GRANTED, and the

1 United States Marshal shall serve those Defendants against whom Plaintiff alleges his deliberate
2 indifference to serious medical needs claim, as directed below. The parties are directed to abide by
3 the new briefing schedule outlined below. The Court notes, however, that Plaintiff is directed to
4 abide by the May 10, 2010 deadline for filing his amendment to the complaint.

5 **CONCLUSION**

6 For the foregoing reasons,

7 1. Although Plaintiff has paid the requisite filing fee, the Court GRANTS Plaintiff's
8 motion to proceed IFP under 28 U.S.C. § 1915 as to all other aspects of this case; however, no
9 further filing is due because it has been paid in full.

10 2. Pursuant to the Court's April 15, 2010 Order, Plaintiff's amendment to the complaint
11 is due on **May 10, 2010**. His amendment to the complaint should contain amended ADA and
12 Section 504 claims against SQSP and the CDCR as set forth above in Sections II(B)(3) of the
13 Court's March 5, 2010 Order. (Plaintiff shall resubmit only his amended ADA and Section 504
14 claims and not the entire complaint.) The failure to do so will result in the dismissal without
15 prejudice of his ADA and Section 504 claims against SQSP and the CDCR.

16 3. The Clerk of the Court shall issue summons and the United States Marshal shall
17 serve, without prepayment of fees, a copy of the original complaint (docket no. 1) in this matter, and
18 a copy of this Order upon: **SQSP Physicians Sayer, Poluzza and Kholsla; as well as SQSP MTAs**
19 **Hill-Culpepper, Guildersleeves, Morrow and Terranu at SQSP; former SQSP Physician Tim**
20 **Belavich at California State Prison - Los Angeles County in Lancaster, California; and former**
21 **SQSP Physician Donald Calvo, whose address shall be provided in an addendum, which shall**
22 **be filed under seal.**¹ The Clerk shall also mail copies of these documents to the Attorney General
23 of the State of California. Additionally, the Clerk shall serve a copy of this Order on Plaintiff.

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

25 a. Defendants shall answer the complaint in accordance with the Federal Rules
26 of Civil Procedure. In addition, no later than **thirty (30) days** from the date their answer is due,
27

28 ¹ The litigation coordinator at SQSP informed Clerk's Office staff of Defendants Belavich
and Calvo's last known addresses.

1 Defendants shall file a motion for summary judgment or other dispositive motion. The motion shall
2 be supported by adequate factual documentation and shall conform in all respects to Federal Rule of
3 Civil Procedure 56. If Defendants are of the opinion that this case cannot be resolved by summary
4 judgment, they shall so inform the Court prior to the date their summary judgment motion is due.
5 All papers filed with the Court shall be promptly served on Plaintiff.

6 b. Plaintiff's opposition to the dispositive motion shall be filed with the Court
7 and served on Defendants no later than **thirty (30) days** after the date on which Defendants' motion
8 is filed. The Ninth Circuit has held that the following notice should be given to plaintiffs:

9 The Defendant has made a motion for summary judgment by which they seek
10 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.

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

24 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc). Plaintiff is advised to read
25 Rule 56 of the Federal Rules of Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
26 (party opposing summary judgment must come forward with evidence showing triable issues of
27 material fact on every essential element of his claim). Plaintiff is cautioned that because he bears
28 the burden of proving his allegations in this case, he must be prepared to produce evidence in
support of those allegations when he files his opposition to Defendants' dispositive motion. Such
evidence may include sworn declarations from himself and other witnesses to the incident, and
copies of documents authenticated by sworn declaration. Plaintiff is advised that if he fails to
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

1 complaint.

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

4 d. The motion shall be deemed submitted as of the date the reply brief is due.
5 No hearing will be held on the motion unless the Court so orders at a later date.

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

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

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

16 8. Extensions of time are not favored, though reasonable extensions will be granted.
17 However, the party making a motion for an extension of time is not relieved from his or her duty to
18 comply with the deadlines set by the Court merely by having made a motion for an extension of
19 time. The party making the motion must still meet the deadlines set by the Court until an order
20 addressing the motion for an extension of time is issued. Any motion for an extension of time must
21 be filed no later than **fifteen (15) days** prior to the deadline sought to be extended.

22 IT IS SO ORDERED.

23 DATED: 4/23/10


SAUNDRA BROWN ARMSTRONG
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JUAN VILLA RAMIREZ,
Plaintiff,

Case Number: CV07-04681 SBA

CERTIFICATE OF SERVICE

v.

JAMES TILTON 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 April 26, 2010, 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.

Juan Villa Ramirez T-24667
California State Prison - San Quentin
2 A/C 6
San Quentin, CA 94974

Dated: April 26, 2010

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