

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

3 DARRYL L. GOLDSTEIN,

No. C 07-05958 SBA (PR)

4 Plaintiff,

5 v.

6 ROBERT SILLEN, ET AL.,

7 Defendants.

**ORDER GRANTING PLAINTIFF AN  
 EXTENSION OF TIME TO FILE  
 OPPOSITIONS TO DEFENDANTS  
 SILLEN'S AND RUSSELL'S AS WELL  
 AS DEFENDANTS DAVID'S AND  
 WILSON'S MOTIONS FOR SUMMARY  
 JUDGMENT; AND ADDRESSING  
 PLAINTIFF'S PENDING MOTIONS**

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 9 Plaintiff, a pro se state prisoner incarcerated at San Quentin State Prison (SQSP), has  
 10 inundated the Court with miscellaneous motions and filings since his complaint was ordered served  
 11 on March 8, 2010. Among other things, he had filed the following motions: (1) "Motion to Strike  
 12 the Declaration of Dr. Elena Tootall [sic] in Support of Motion for Summary Judgment or, in the  
 13 Alternative, Summary Adjudication" (docket no. 129); (2) "Motion Requesting the Courts [sic]  
 14 Consideration to Plaintiff's Confinement" (docket no. 147); (3) "Motion for Administrative Relief:  
 15 Request for Clarification Concerning Discover[y] Request Propound[ed] on Defendant Tilton"  
 16 (docket no. 149); (4) "Motion for Administrative Relief re Medical Records from Defendants  
 17 Wilson and David" (docket no. 159); (5) "Request for Appointment of Medical Expert" and  
 18 "Request to File Supplemental Declaration in Support of Request for Appointment of Medical  
 19 Expert" (docket nos. 170, 194); (6) "Request for U.S. Marshal Service on Defendants Tilton, Ayers,  
 20 Welch, Pretrikas, Saylor, Kannon, Tootell and Griffith" (docket no. 188); (7) "Request for Court  
 21 Order to Compel Personal Attendance of Defendants at Settlement Conference" (docket no. 199);  
 22 and (8) "Request for Court Ordered Medical and Mental Health Examination" (docket no. 211).  
 23 Plaintiff has not filed his oppositions to Defendants Sillen's and Russell's as well as Defendants  
 24 David's and Wilson's motions for summary judgment. These oppositions are currently overdue.

25 **I. Motion for Extension of Time to File Oppositions and Motion for Medical and Mental**  
 26 **Health Exams**

27 In a letter dated January 5, 2011, Plaintiff explained that his opposition to Defendants Sillen's  
 28 and Russell's motion for summary judgment "was destroyed by a Correctional Officer" (docket no.

1 206). On January 25, 2011, Plaintiff filed a document entitled, "Request for Court Ordered Medical  
2 and Mental Health Examination." In that request, Plaintiff states that "health conditions,  
3 uncooperative defendants, [and] retaliatory actions by San Quentin correctional staff" have  
4 prevented him from filing timely oppositions to Defendants Sillen's and Russell's as well as  
5 Defendants David's and Wilson's motions for summary judgment. Therefore, the Court construes  
6 these documents as a request for an extension of time to file his oppositions.

7 Plaintiff's request for an extension of time to file his oppositions is GRANTED. The parties  
8 shall abide by the briefing schedules outlined below.

9 In his January 25, 2011 filing, Plaintiff also requests medical and mental health examinations  
10 because he is "proceeding pro se under rather questionable conditions of confinement which have  
11 taken a toll on Plaintiff's medical and mental health." (Jan. 25, 2011 Req. at 4.) The Court DENIES  
12 Plaintiff's request for medical and mental health examinations (docket no. 211). If Plaintiff requires  
13 any medical and mental health examinations, then he must request prison officials to provide him  
14 with such. If prison officials' failure to do so causes Plaintiff any harm, then he may file a separate  
15 civil rights action alleging any constitutional violations from their actions.

16 **II. Plaintiff's Remaining Pending Motions**

17 The Court now turns to Plaintiff's remaining pending motions.

18 **A. Motion to Strike the Declaration of Elena Tootell**

19 On August 9, 2010, Defendants Sillen and Russell filed a motion for summary judgment  
20 (docket no. 91) and a declaration of Dr. Elena Tootell<sup>1</sup> in support of their motion for summary  
21 judgment (docket no. 94). On September 7, 2010, Plaintiff filed a motion to strike the declaration of  
22 Defendant Tootell (docket no. 129). Defendant Tootell's declaration states:

23 On October 31, 2006, Plaintiff met with and was examined by Dr. Karen Saylor,  
24 San Quentin's CMO at the time. Plaintiff and Dr. Saylor discussed Plaintiff's foot  
25 problems. In addition to explaining to Plaintiff that he would be referred to Dr.  
26 Griffith, Dr. Saylor also explained to Plaintiff that she could not provide him with  
27 a chrono for soft shoes, because all shoes issued to San Quentin inmates were  
28 soft.

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<sup>1</sup> During the settlement conference before Magistrate Judge Nandor Vadas on December 29,  
2010, the parties agreed to dismiss all claims against Defendant Tootell with prejudice. (Minute  
Entry of Dec. 29, 2010 Settlement Conf. at 1.)

1 (Tootell Decl. ¶ 7.) Plaintiff alleges the declaration is untrue because "Saylor never examined -  
2 came into personal contact with or spoke with the plaintiff." (Mot. to Strike at 3.) Plaintiff requests  
3 this Court strike the declaration in its entirety or in the alternative have an evidentiary hearing. (Id.  
4 at 5.) Based on Plaintiff's allegations, the Court would have to find that Defendants Saylor and  
5 Tootell are being untruthful about the medical treatment provided to Plaintiff. In order to strike the  
6 declaration, the Court would then have to accept Plaintiff's version of events while rejecting  
7 Defendants Saylor's and Tootell's. However, the Court cannot make credibility determinations in  
8 connection with a summary judgment motion. Therefore, the Court DENIES Plaintiff's motion to  
9 strike (docket no. 129).

10 Plaintiff's motion to strike Defendant Tootell's declaration could be construed as part of his  
11 oppositions to Defendants Sillen's and Russell's as well as Defendants David's and Wilson's motions  
12 for summary judgment. However, because Plaintiff did not entitle his motion as such, the Court  
13 nonetheless directs Plaintiff to file his oppositions with supporting declarations made under penalty  
14 of perjury.

15 **B. Motion Relating to Plaintiff's Confinement**

16 On September 30, 2010, Plaintiff filed a motion requesting the Court's consideration of his  
17 confinement (docket no. 147). Plaintiff is confined to the Reception Unit at SQSP. (Mot. Req.  
18 Consideration of Confinement at 1.) Plaintiff alleges SQSP "has been on a modified program since  
19 September 16, 2010 after - shoots [sic] being fired on the West Block Reception Yard," which  
20 results in "prisoners [being] locked down 23 1/2 hours per day." (Id. at 1-3.) Plaintiff alleges  
21 "Defendants . . . concluded to keep Plaintiff confined in the Reception Unit where plaintiff's ability  
22 to prosecute this case is severely limited opposed to mainline housing." (Id. at 4) Plaintiff also filed  
23 a declaration in support of this motion in which he further alleges "that my efforts to prosecute this  
24 case have been further hindered by the significant number of lock downs and modified  
25 programming" at SQSP. (Decl. in Supp. of Mot. Req. Consideration of Confinement ¶ 9.) Plaintiff  
26 further alleges the law library was closed on September 15, 2010, because shots were fired, and  
27 again on September 20, 2010, because of staff furlough days. (Id. ¶ 10-11.) As a result, Plaintiff  
28 states "I was unable to complete motions for appointment of medical expert any [sic] stay of

1 summary judgment." (Id. ¶ 12.) Plaintiff "requests that this Court take this information under  
2 serious consideration." (Mot. Req. Consideration of Confinement at 4.) The Court construes this  
3 motion as a request to be transferred from the SQSP Reception Unit so that he may access the law  
4 library.

5 In Bounds v. Smith, the Supreme Court held "that the fundamental constitutional right of  
6 access to the courts requires prison authorities to assist inmates in preparation and filing of  
7 meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance  
8 from persons trained in the law." 430 U.S. 817, 828 (1977). Subsequently, the Supreme Court  
9 clarified that Bounds did not establish a substantive right to law library access, but rather signaled  
10 that in order for prisoners' right of access to the courts to be meaningful, they must be given  
11 adequate resources to prepare. See Lewis v. Casey, 518 U.S. 343, 350-51 (1996). The Court  
12 explained:

13 Because Bounds did not create an abstract, freestanding right to a law library or legal  
14 assistance, an inmate cannot establish relevant actual injury simply by establishing  
15 that his prison's law library or legal assistance program is subpar in some theoretical  
16 sense. That would be the precise analog of the healthy inmate claiming constitutional  
17 violation because of the inadequacy of the prison infirmary. Insofar as the right  
18 vindicated by Bounds is concerned, "meaningful access to the courts is the  
19 touchstone," and the inmate therefore must go one step further and demonstrate that  
20 the alleged shortcomings in the library or legal assistance program hindered his  
21 efforts to pursue a legal claim. He might show, for example, that a complaint he  
22 prepared was dismissed for failure to satisfy some technical requirement which,  
23 because of deficiencies in the prison's legal assistance facilities, he could not have  
24 known. Or that he had suffered arguably actionable harm that he wished to bring  
25 before the courts, but was so stymied by inadequacies of the law library that he was  
26 unable even to file a complaint.

27 Id. at 351.

28 In the instant case, Plaintiff has not alleged any actual harm caused by his alleged lack of  
access to SQSP law library. In fact, a review of Plaintiff's prolific filings in this case, and the  
numerous civil actions he has filed in the past, demonstrates that he possesses a higher level of legal  
sophistication than most pro se plaintiffs and has had adequate resources and materials to pursue his  
various claims. Due to the extensive and thorough nature of Plaintiff's past and current filings,<sup>2</sup> it is

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<sup>2</sup> Plaintiff alleges SQSP has been on "lock down" since July 14, 2010 and therefore he cannot prosecute this case by filing and responding to motions. However, since July 14, 2010 until the filing of his request to be transferred from the SQSP Reception Unit, Plaintiff has filed seven

1 clear that his claims have not been hindered by a lack of access to the law library.

2 For the foregoing reasons, the Court finds that Plaintiff is and has been allowed sufficient  
3 access to the law library, and that he has suffered no harm from a lack thereof. Accordingly,  
4 Plaintiff's "Motion Requesting the Court's Consideration to Plaintiff's Confinement" (docket no. 147)  
5 is DENIED.

6 **C. Discovery Requests**

7 On September 30, 2010, Plaintiff has filed several discovery motions, which the Court will  
8 construe as motions to compel discovery. In his "Motion for Administrative Relief: Request for  
9 Clarification Concerning Discover[y] Request Propound[ed] on Defendant Tilton" (docket no. 149),  
10 he seeks an Order from the Court directing Defendants David, Wilson, and Tilton "to inform the  
11 court at once if they plan to responde [sic] to the Discovery Requests Propounded by Plaintiff on  
12 Sept. 15, 2010, Sept. 19, 2010, Sept. 9, 2010." In his "Motion for Administrative Relief re Medical  
13 Records From Defendant Wilson and David" (docket no. 159), he seeks the following: (1) "complete  
14 medical records, including any and all medical records received by San Quentin State Prison  
15 officials from any other hospital, jail, prison, and any and all medical related appeals from January 1,  
16 2003, to present . . . ." and (2) "complete copy of his Inmate central File for the number P-79097 for  
17 the years January 1, 2003 to the present." Plaintiff also requests that the materials be produced in  
18 chronological order and enlarged by twenty-five percent.

19 On October 25, 2010, Defendants filed an opposition to Plaintiff's motions to compel (docket  
20 no. 165). Among other reasons for their opposition, Defendants allege: (1) Plaintiff has not satisfied  
21 the meet and confer requirement; (2) Plaintiff was previously sent his medical records on July 26,  
22 2010; (3) Plaintiff "has not adduced any medical need for enlarged records;" (4) the "pertinent  
23 medical records are already attached to, and summarized in, the Tootell Decl.;" and (5) Plaintiff's  
24 Central File is irrelevant and should not be produced for security reasons. (Opp'n to Mot. to Comp.

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26 \_\_\_\_\_  
27 motions accompanied with seven declarations in support of those motions. In addition, Plaintiff has  
28 filed nine letters to the Court and one reply. Furthermore, since requesting the transfer, Plaintiff has  
filed the following: an additional seven motions accompanied with ten declaration in support of  
those motions; eight letters to the Court; and one reply.

1 at 1-4.) On November 4, 2010, Plaintiff replied to Defendants' opposition by addressing a letter to  
2 the Court (docket no. 172), stating that he has already met and conferred with defense counsel.<sup>3</sup>

3 Even if Plaintiff has satisfied the meet and confer requirements, the Court finds that Plaintiff  
4 has already been furnished with the relevant medical records; therefore, those requests are DENIED  
5 as moot. All other discovery requests are DENIED as irrelevant because his complete file is not  
6 necessary to oppose summary judgment. Therefore, all discovery requests (docket nos. 149, 159)  
7 are DENIED.

8 **D. Request for Appointment of Medical Expert**

9 Plaintiff seeks the appointment of a medical expert (docket nos. 170, 194).<sup>4</sup> "Having a  
10 medical expert review those records would allow the Court to see the dire condition Plaintiff's foot  
11 was in at the time of his parole Feb. 2008." (Mot. for Appointment of Medical Expert at 8.)  
12 Specifically, Plaintiff alleges "Defendants have kept from the court the crucial report by Dr. Lisa  
13 Pratt and medical records from institutions and hospitals where plaintiff was provided foot-care  
14 treatment." (Id. at 14.) Plaintiff is not entitled to a medical expert at this stage of the case. If  
15 Plaintiff survives summary judgment, he may renew his medical expert request. Accordingly, his  
16 motion for appointment of a medical expert (docket nos. 170, 194) is DENIED as premature.

17 **E. Motions Denied as Moot**

18 Because the settlement hearing already took place on December 29, 2010, Plaintiff's  
19 "Request for Court Order to Compel Personal Attendance of Defendants at Settlement Conference"  
20 (docket no. 199) is DENIED as MOOT. Similarly, because the Court has already ordered the U.S.  
21 Marshal to serve Defendants Tilton, Ayers, Welch, Pretrikas, Saylor, Kannon, Tootell and Griffith,  
22 Plaintiff's motion for the U.S. Marshal to Serve these Defendants (docket no. 188) is DENIED as  
23 MOOT.

24 \_\_\_\_\_  
25 <sup>3</sup> Plaintiff has attached a copy of a letter dated October 20, 2010 addressed to Defendants'  
26 counsel in which the Plaintiff sought to satisfy the meet and confer requirements. (Pl. Reply at Ex.  
3.)

27 <sup>4</sup> Plaintiff has filed a document entitled, "Request to File Supplemental Declaration In  
28 Support of Request for Appointment of Medical Expert" (docket no. 194). The Court construes this  
motion as a supplement to his motion for appointment of a medical expert.

CONCLUSION

For the reasons outlined above,

1. Plaintiff's request for an extension of time to file his oppositions to Defendants Sillen's and Russell's as well as Defendants David's and Wilson's motions for summary judgment (docket no. 206) is GRANTED. The time in which Plaintiff may file his oppositions will be extended up to and including **February 14, 2011**. If Defendants Sillen and Russell as well as Defendants David and Wilson wish to file reply briefs, they shall do so no later than **March 15, 2011**.

The Court notes that the parties should also abide by the Court's previously set briefing schedules -- in its March 8, 2010, August 25, 2010 and September 9, 2010 Orders -- as to the following Defendants' dispositive motions: Kannon, Griffith, Welch, Kelso, Ayers, Petrikas, Saylor, and Kannon.<sup>5</sup> Similarly, the parties should abide by the briefing schedules for any oppositions and replies as well.

**No further extensions of time will be granted in this case absent exigent circumstances.**

2. Plaintiff's "Request for Court Ordered Medical and Mental Health Examination" (docket no. 211) is DENIED.

3. Plaintiff's "Motion to Strike the Declaration of Dr. Elena Tootall [sic] in Support of Motion for Summary Judgment or, in the Alternative, Summary Adjudication" (docket no. 129) is DENIED.

4. Plaintiff's "Motion Requesting the Courts [sic] Consideration to Plaintiff's Confinement" (docket no. 147) is DENIED.

5. Plaintiff's "Motion for Administrative Relief: Request for Clarification Concerning Discover[y] Request Propound[ed] on Defendant Tilton" (docket no. 149) and "Motion for Administrative Relief re Medical Records From Defendant Wilson and David" (docket no. 159) are DENIED.

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<sup>5</sup> To date, Defendants Kannon, Griffith and Welch have not filed an answer. However, Defendant Griffith's attorney has informed the Court that he will soon be filing an answer on behalf of Defendant Griffith.

1           6.       Plaintiff's "Request for Appointment of Medical Expert" and "Request to File  
2 Supplemental Declaration in Support of Request for Appointment of Medical Expert" (docket nos.  
3 170, 194), which have been construed as a request for a medical expert, are DENIED.

4           7.       Plaintiff's "Request for Court Order to Compel Personal Attendance of Defendants at  
5 Settlement Conference" (docket no. 199) is DENIED as MOOT.

6           8.       Plaintiff's "Request for U.S. Marshal Service on Defendants Tilton, Ayers, Welch,  
7 Pretrikas, Saylor, Kannon, Tootell and Griffith" (docket no. 188) is DENIED as MOOT.

8           9.       This Order terminates Docket nos. 129, 147, 149, 159, 170, 188, 194, 199 and 211.

9           IT IS SO ORDERED.

10          DATED: 2/2/11

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

DARRYL L. GOLDSTEIN,  
Plaintiff,

Case Number: CV07-05958 SBA

**CERTIFICATE OF SERVICE**

v.

ROBERT SILLEN, ET AL. 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 February 3, 2011, 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.

Darryl Lee Goldstein P-79097  
California State Prison - San Quentin  
San Quentin, CA 94964

Dated: February 3, 2011

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