

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,

**ORDER GRANTING PLAINTIFF'S  
SECOND REQUEST FOR EXTENSION  
OF TIME TO FILE AMENDMENT TO  
COMPLAINT AND ADDRESSING HIS  
OTHER PENDING MOTIONS**

5 v.

6 ROBERT SILLEN, et al.,

7 Defendants.

(Docket nos. 24, 29, 34)

8 \_\_\_\_\_ /  
9 The instant case was commenced by Plaintiff Darryl L. Goldstein, who is incarcerated at the  
10 San Mateo County Jail. Before the Court is Plaintiff's second request for an extension of time to file  
11 his amendment to the complaint. Also before the Court are Plaintiff's request to grant inmate Ryan  
12 Christopher Hatcher next friend status to prosecute this action on behalf of Plaintiff, his request for  
13 an Order granting him "more broader" access to the law library, and his discovery requests.

14 **I. Second Request for Extension of Time to File Amendment to the Complaint**

15 Plaintiff's second request for an extension of time to file his amendment to the complaint is  
16 GRANTED. Plaintiff shall file his amendment to the complaint no later than **May 21, 2010**, as  
17 directed below.

18 **II. Next Friend Request**

19 Plaintiff has filed a motion entitled, "Plaintiff's Request for the Court to Acknowledge [sic]  
20 Plaintiff's Assistant in this Case," which the Court construes as a request for to grant inmate Ryan  
21 Christopher Hatcher next friend status to prosecute this action on behalf of Plaintiff.

22 Federal Rule of Civil Procedure 17(c) permits a suit by a next friend for an infant or  
23 incompetent person. In order to proceed as next friend, inmate Hatcher must show that Plaintiff --  
24 the real party in interest -- "is unable to litigate his own cause due to mental incapacity, lack of  
25 access to court, or similar disability." Whitmore v. Arkansas, 495 U.S. 149, 163-64 (1990). In  
26 addition, the next friend must be truly dedicated to the best interests of the person on whose behalf  
27 he seeks to litigate, and he must have some significant relationship with the real party in interest. Id.

1 The person seeking next friend status holds the burden of establishing "the propriety of his status  
2 and thereby justifying the jurisdiction of the court." Id.

3 There is no evidence that inmate Hatcher has Plaintiff's best interests in mind, or that inmate  
4 Hatcher has a "significant relationship" with Plaintiff. While inmate Hatcher claims Plaintiff "has an  
5 number of medical problems affect[ing] his daily activities," there is no evidence that Plaintiff is  
6 mentally incompetent or otherwise incapable of pursuing his own action. Accordingly, the Court  
7 DENIES Plaintiff's next friend request (docket no. 24).

8 **III. Law Library Access**

9 Also before the Court is Plaintiff's "Motion Informing the Court of His Present Access to the  
10 Court and Request for a More Broader Request to the San Mateo County Jail Staff," which shall be  
11 construed as a request for an order directing jail officials to allow him access to the law library for  
12 "at least two (2) hour . . . sessions per week" and to provide him with "pro per/pro se legal supplies  
13 and legal postage."

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

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

1 Id. at 351.

2 In the instant case, Plaintiff has not claimed any actual harm caused by his alleged lack of  
3 access to the jail's law library or to any of the other items he listed. Furthermore, as mentioned  
4 above, the Court has granted Plaintiff an extension of time to file his amendment to the complaint.  
5 Accordingly, Plaintiff's request for an order directing jail officials at San Mateo County Jail to  
6 provide him with "more broader" law library access and with the items listed above (docket no. 29)  
7 is DENIED at this time.

8 **IV. Discovery Requests**

9 Plaintiff has filed a motion entitled, "Plaintiff's Request for Court Orders In Order for  
10 Plaintiff to Comply With Order Dated March 8, 2010," in which he seeks the production of  
11 documents which he maintains are relevant to the prosecution of his claims. The scope of discovery  
12 is limited to matters "relevant to the claim or defense of any party . . . . Relevant information need  
13 not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of  
14 admissible evidence." See Fed. R. Civ. P. 26(b)(1). Discovery may be further limited by court order  
15 if "(1) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some  
16 other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking  
17 discovery has had ample opportunity by discovery in the action to obtain the information sought; or  
18 (iii) the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P.  
19 26(b)(2).

20 Only when the parties have a discovery dispute that they cannot resolve among themselves  
21 should they ask the Court to intervene in the discovery process. The Court does not have time or  
22 resources to oversee all discovery and therefore requires that the parties present to it only their very  
23 specific disagreements. To promote this goal of addressing only very specific disagreements, federal  
24 and local discovery rules require the parties to meet and confer to try to resolve their disagreements  
25 before seeking court intervention. See Fed. R. Civ. P. 37(a)(2)(B); N.D. Cal. Local Rule 37-1.  
26 Because Plaintiff is incarcerated he is not required to meet and confer with Defendants in person.  
27 Rather, if his discovery requests are denied and he intends to seek a motion to compel he need only  
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1 send a letter to Defendants to that effect, offering them one last opportunity to provide him the  
2 sought-after information.

3 Here, Plaintiff did not provide Defendants with one last opportunity to address each  
4 discovery request upon which he now requests the Court to produce. Moreover, it may be that  
5 Plaintiff will obtain some sought-after discovery if Defendants file a motion for summary judgment  
6 and accompanying exhibits, with which Defendants shall also serve Plaintiff. For these reasons,  
7 Plaintiff's discovery requests are DENIED as premature. In the interests of justice, the Court sets a  
8 discovery cut-off date of **thirty (30) days** from the date Plaintiff is served with Defendants'  
9 dispositive motion. If Plaintiff attempts to meet and confer with Defendants regarding requests for  
10 the production of documents and is not satisfied with the result he may file a renewed discovery  
11 motion. But in no event shall he file such a motion until after he has reviewed Defendants'  
12 dispositive motion.

### 13 CONCLUSION

14 1. Plaintiff's second request for an extension of time to file his amendment to the  
15 complaint is GRANTED. Plaintiff shall file his amendment to the complaint no later than **May 21,**  
16 **2010.** He must clearly label the document an "Amendment to the Complaint," and write in the case  
17 number for this action, Case No. C 07-5958 SBA (PR). The failure to do so by the May 21, 2010  
18 deadline will result in the dismissal of his supervisory liability claims against Defendants Kelso,  
19 Ayers, Petrikas, Saylor, Kannon and Pootell without prejudice.

20 2. The Court DENIES Plaintiff's motion entitled, "Plaintiff's Request for the Court to  
21 Acknowledge [sic] Plaintiff's Assistant in this Case" (docket no. 24), which has been construed as a  
22 request for to grant inmate Hatcher next friend status to prosecute this action on behalf of Plaintiff.

23 3. The Court DENIES Plaintiff's motion, entitled "Motion Informing the Court of His  
24 Present Access to the Court and Request for a More Broader Request to the San Mateo County Jail  
25 Staff" (docket no. 29), which has been construed as a request for an order directing jail officials at  
26 San Mateo County Jail to provide him with "more broader" law library access and with the items  
27 listed above.

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1           4.       The Court DENIES as premature Plaintiff's motion entitled, "Plaintiff's Request for  
2 Court Orders In Order for Plaintiff to Comply With Order Dated March 8, 2010" (docket no. 34), in  
3 which he seeks the production of documents which he maintains are relevant to the prosecution of  
4 his claims.

5           5.       This Order terminates Docket nos. 24, 29 and 34.

6           IT IS SO ORDERED.

7           DATED: 5/3/10

  
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 FEDERAL RECEIUCER 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 May 5, 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.

Darryl Lee Goldstein 100002  
San Mateo County Jail  
300 Bradford Street  
Redwood City, CA 94063

Dated: May 5, 2010

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