

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

DARRYL LEE GOLDSTEIN,) No. C 08-04840 SBA (PR)
Plaintiff,)
v.)
SHERIFF DON HORSELY, et al.,)
Defendants.)

**ORDER REVIEWING AMENDMENT TO THE
COMPLAINT; GRANTING DEFENDANTS'
MOTION FOR EXTENSION OF TIME TO FILE
DISPOSITIVE MOTION; ADDRESSING
PLAINTIFF'S PENDING MOTIONS;
REFERRED CASE TO PRO SE PRISONER
SETTLEMENT PROGRAM; REQUIRING
SERVICE ON DEFENDANT BOWEN AND
SETTING BRIEFING SCHEDULE**

Plaintiff Darryl Lee Goldstein, a state prisoner currently incarcerated at California State Prison - Solano (Solano), filed a pro se civil rights action pursuant to 42 U.S.C. § 1983. The following background is taken from the Court's February 9, 2011 Order:

On August 8, 2005, Plaintiff filed a previous civil rights action, Case No. C 05-3209 SBA (PR). He alleged that while he was at the San Mateo County Jail (SMCJ), Defendants retaliated against him and violated his right to exercise his religion under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1 (2000) (RLUIPA). (Compl., Attach. at 2.) In an Order dated July 29, 2008, the Court dismissed his complaint with leave to amend. (July 29, 2008 Order in Case No. C 05-3209 SBA (PR).) In the present case, Plaintiff acknowledges that:

The claims in this complaint were originally filed in case no. C-05-3209 SBA. The Court dismissed all the claims in that case except the ones submitted in the instant complaint. These claims all relate to the Religious Land Use [and] Institutionalized Persons Act. Plaintiff was instructed to file an Amended Complaint addressing these claims.

(Compl. Attach. at 2.) In the July 29, 2008 Order, Plaintiff was specifically directed to "link specific Defendants to his claim by explaining what that Defendant did that caused a violation of Plaintiff's constitutional rights." (July 29, 2008 Order in Case No. C 05-3209 SBA (PR) at 10-11 (citing Leer v. Murphey, 844 F.2d 628, 634 (9th Cir. 1988).)) Further, the Court directed Plaintiff to clarify his claims against certain Defendants: "If Plaintiff intends to sue a Defendant based on supervisory liability, he must allege that the Defendant, as a supervisor, 'participated in or directed the violations, or knew of the violations and failed to act to prevent them.'" (Id. at 14 (citing Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989))). Plaintiff was also directed to allege the specific dates of the violations rather than the time frame he provided as "March 14, 2005 to December 30, 2005." (Id. at 11.) Moreover, Plaintiff was directed to explain whether he exhausted his administrative remedies with respect to his RLUIPA and retaliation claims before he filed his complaint. (Id.) Plaintiff failed to file an amended complaint; therefore, in an Order dated September 3, 2008, the Court dismissed his complaint without prejudice.

In the present case, Plaintiff re-alleges that the Defendants violated his constitutional rights to practice his religion, discriminated against him, retaliated against him for prior litigation complaints he filed against San Mateo County in the past, and subjected him to intentional emotional distress." (Compl. at 2.)

Plaintiff re-names Defendant Trindle and now asserts the following Defendants also participated in the alleged violation: San Mateo County Sheriff Don Hersley,¹ Commander of SMCJ Trisha Sanchez, Assistant Commander of SMCJ Lt. Randleman, Head SMCJ Chaplain Reverend Carole Bowen, San Mateo County, and Does I-V." (Id. at 1.)

(Feb. 9, 2011 Order at 1-2.) In its February 9, 2011 Order, the Court found that Plaintiff stated a cognizable RLUIPA claim against Defendants Horsely, Trindle, Sanchez, Randleman and Bowen. Plaintiff's retaliation claim was dismissed with leave to amend. The Court stated:

Within **thirty (30) days** of the date of this Order Plaintiff may file an amended retaliation claim as set forth above in Section II(B) of this Order. (Plaintiff shall resubmit only that claim and not the entire complaint.) The amended claim must be submitted on an amendment to the complaint. It must include the caption as well as the civil case number of this action (C 08-04840 SBA (PR)) and the words AMENDMENT TO THE COMPLAINT on the first page. In his amendment to the complaint, Plaintiff must also link specific Defendants to his retaliation claim by explaining what that Defendant did that caused a violation of Plaintiff's constitutional rights. Leer, 844 F.2d at 634. If Plaintiff intends to sue a Defendant based on supervisory liability, he must allege that the Defendant, as a supervisor, "participated in or directed the violations, or knew of the violations and failed to act to prevent them." Taylor, 880 F.2d at 1045. Plaintiff shall also inform the Court whether he exhausted his administrative remedies with respect to the retaliation claim in his complaint before he filed his suit. The failure to do so will result in the dismissal without prejudice of his retaliation claim.

(Id. at 9.) Finally, the Court dismissed Plaintiff's claims against the Doe Defendants and his municipal liability claim against Defendant San Mateo County.

The Clerk of the Court mailed a Notice of Lawsuit and Request for Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint and all attachments thereto to Defendants Horsely, Trindle, Sanchez, Randleman and Bowen.

On March 1, 2011, Plaintiff filed a motion for an extension of time to file his amendment to the complaint, which the Court granted in an Order dated March 31, 2011. Plaintiff was given until May 2, 2011 to file his amendment to the complaint.

On March 10, 2011, Defendants Horsely, Trindle, Sanchez and Randleman returned their

¹ The Court initially referred to Defendant Horsely as "Defendant Hersley" in its Order of Service; however, the correct spelling of his name is "Defendant Horsely."

1 waiver of service form.

2 On April 12, 2011, Defendants Horsely, Trindle, Sanchez and Randleman filed their answer
3 to the complaint.

4 In an Order dated April 25, 2011, the Court granted Defendants Horsely, Trindle, Sanchez
5 and Randleman an extension of time to file their dispositive motion.

6 On April 26, 2011, Plaintiff filed a "Motion for [an] Order Directing San Mateo County
7 Counsel's Office to Appeal on Behalf of Defendant Carole Bowen."

8 On May 12, 2011, Plaintiff filed his amendment to the complaint, which the Court reviews
9 below.

10 On May 16, 2011, Plaintiff filed a document entitled, "Request to Vacate Deposition of
11 Darryl Lee Goldstein," which was set for May 19, 2011. (Pl.'s Req. to Vacate Depo. at 2.) Plaintiff
12 claims that he "currently is prescribed medications that will certainly impair plaintiff[']s ability to
13 adequately participate in the Deposition." (*Id.*)

14 Plaintiff's May 19, 2011 deposition did not take place. Instead, on May 17, 2011, Defendants
15 filed a response to Plaintiff's "Request to Vacate Deposition of Darryl Lee Goldstein," as well as a
16 motion "seeking a further extension of time for [them] to file their dispositive motion, from June 14,
17 2011 to July 14, 2011." (Defs.' Response and Motion for EOT at 1.) Defendants claim that a further
18 extension of time is necessary "so that they [may] have the opportunity to depose Plaintiff before
19 they are required to file a dispositive motion." (*Id.* at 4.) Finally, Defendants state that "there are *no*
20 certain available dates [for Plaintiff's deposition] until June 27-29, 2011." (*Id.* (emphasis in
21 original).)

22 On May 20, 2011, Plaintiff filed a "Request to Have Case Referred to the Pro Se Prisoner
23 Settlement Program."

24 On May 24, 2011, Deputy County Counsel Ceide Zapparoni, who currently represents
25 Defendants Horsely, Trindle, Sanchez and Randleman, responded to Plaintiff's April 26, 2011
26 motion by confirming that "San Mateo County Counsel does not represent Ms. Bowen." (May 24,
27 2011 Letter from Ceide Zapparoni, Esq. at 1.) Deputy County Counsel Zapparoni further stated that

1 Defendant Bowen was "formerly employed by the Service League of San Mateo County," which is
2 "located at 727 Middlefield Road, Redwood City, CA 94063." (Id.)

3 Also on May 24, 2011, Plaintiff filed a "Request for the Court to Stay It's [sic] Ruling on the
4 Defendants['] Request for Extension of Time to File Dispositive Motion Until May 27, 2011."

5 On May 27, 2011, Defendants Horsely, Trindle, Sanchez and Randleman filed an answer to
6 the amendment to the complaint, which was entitled, "Defendants' Answer to Plaintiff's First
7 Amended Complaint."

8 On May 31, 2011, Plaintiff filed an "Opposition to the Defendants['] Request for Additional
9 Time to File Summary Judgment Motion."

10 On June 1, 2011, Plaintiff filed a "Motion to Strike the Declaration of Ceide Zapparoni in
11 Support of Defendants['] Response to Plaintiff's Request to Vacate Plaintiff's Deposition Noticed for
12 May 19, 2011; Defendants['] Request for Extension of Time to File Dispositive Motion." Plaintiff
13 points to a portion in Deputy County Counsel Zapparoni's declaration which states, "I make this
14 Declaration in Support of the Defendant[s'] Response to Plaintiff's Request For Extension Of Time to
15 File Dispositive Motion for May 19, 2011 and Request for Extension of Time to File Dispositive
16 Motion." (Zapparoni Decl. ¶ 1.) Plaintiff claims that he has "never requested from this Court an
17 extension of time to file an [sic] Dispositive motion as stated under penalty of perjury in the
18 Declaration of attorney Ceide Zapparoni." (Pl.'s Decl. In Supp. of Mot. to Strike at 1.)

19 On June 7, 2011, Plaintiff filed a "Motion to Strike the Defendants['] Answer to Plaintiff's
20 First Amended Complaint or O[r]der Directing Defendants to Retitle [and] Refile the Appropriate
21 Document." In this motion, Plaintiff points out that Defendants should have filed an answer to the
22 "Amendment to the Complaint" instead of an answer to the "First Amended Complaint." (Pl.'s June
23 7, 2011 Mot. at 1.)

24 **DISCUSSION**

25 **I. Plaintiff's Amendment to the Complaint**

26 In the amendment, Plaintiff states that he is amending his retaliation claims against
27 Defendants Horsely, Trindle, Sanchez, Randleman and Bowen stemming from the incidents in 2005.

1 He also alleges that he was "again confined at the same San Mateo County Jail, [and that] [s]ome of
2 the same defendants **once again** caused the Plaintiff constitutional injuries from January 10, 2010 to
3 June 13, 2010 [so] Plaintiff will state those claims in this brief in order to consolidate [sic] the claims
4 and avoid filing a new action." (Am. to Compl. at 1-2.) Plaintiff states that the "additional claims
5 are religious claims much like the one already served on the defendants, claims of deliberate
6 indifference to the Plaintiff[']s serious medical needs[.]" (Id. at 2.)

7 The Court notes that it previously dismissed Plaintiff's retaliation claim, stating:

8 The prisoner must show that the type of activity he was engaged in was
9 constitutionally protected, that the protected conduct was a substantial or
10 motivating factor for the alleged retaliatory action, and that the retaliatory action
11 advanced no legitimate penological interest. Hines v. Gomez, 108 F.3d 265, 267-
12 68 (9th Cir. 1997) (inferring retaliatory motive from circumstantial evidence).
13 Retaliatory motive may be shown by the timing of the allegedly-retaliatory act and
14 inconsistency with previous actions, as well as direct evidence. Bruce v. Ylst, 351
15 F.3d 1283, 1288-89 (9th Cir. 2003). The filing of civil rights actions does
16 constitute the exercise of constitutional rights. However, the simple allegation that
17 certain retaliatory actions occurred after Plaintiff's prior civil rights actions were
18 filed does not, without more, establish retaliation; rather, Plaintiff must allege a
19 nexus between the two. See Huskey, 204 F.3d at 899.

20 Here, Plaintiff alleges that "he was discriminated and retaliated against by
21 the Defendants each and every one of them based on his filing prior litigation
22 against county jail staff and the county of San Mateo." (Compl. at 11.) However,
23 Plaintiff does not allege any nexus between the filing of his prior actions and the
24 alleged retaliatory actions.² Plaintiff also has not alleged that he has exhausted his
25 administrative remedies as to this claim. Accordingly, Plaintiff's retaliation claim is
DISMISSED with leave to amend. He may file an amended retaliation claim in an
amendment to the complaint in order to allege that the above-referenced actions
were in retaliation for the exercise of his constitutional rights.

26
(Feb. 9, 2011 Order at 5-6 (footnote in original).)

27 In his amendment to the complaint, Plaintiff addresses his "retaliation claims from the period
of incarceration from March 15, 2005 to June 28, 2006." (Am. to Compl. at 2.) Plaintiff clarifies
that during the relevant time frame, Defendant Horsely was the "Sheriff of San Mateo County who
was charged with the Custody of prisoners in the San Mateo County Jail System and was responsible
for protecting the civil rights of the wards in his custody." (Id.) Plaintiff states that Defendant
Trindle was the "Assistance Sheriff of the County of San Mateo and his position as Assistant Sheriff,

² The Court notes Plaintiff was previously directed to cure this pleading deficiency in the July 29, 2008 Order in Case No. C 05-3209 SBA (PR). Not only did he fail to amend the previous complaint, but he has also failed to correct this pleading deficiency in his subsequent complaint.

1 he was in charge of the San Mateo County Jails, [and] he had a responsibility [sic] to protect the civil
2 rights of his wards . . ." (Id.) Plaintiff states that Defendant Sanchez "was the Captain who was the
3 Commander of the San Mateo County Jail Ma[g]uire Correctional Facility." (Id.) Plaintiff claims
4 that Defendant Randleman "was the Jail Commander" and that he "carries out the policies of the Jail
5 Administration and had a responsibility [sic] to protect the civil rights of his wards . . ." (Id.)
6 Finally, Plaintiff claims that Defendant Bowen "was employed by the Service League of San Mateo
7 County and was assigned to the [S]an Mateo County Sheriff[']s Office as the **Supervising Chaplain**
8 for the San Mateo County Jail System . . ." (Id. at 3 (emphasis in original).) Plaintiff claims that he
9 is suing Defendants Horsely, Trindle and Bowen in both their individual and official capacities. The
10 Court assumes he is suing Defendants Sanchez and Randleman only in their individual capacities. In
11 the body of his amendment to the complaint, Plaintiff again makes conclusory allegations against
these Defendants, stating:

12 Plaintiff alleges that: (1) these defendants participated in the alleged constitutional
13 violations, (2) THAT AFTER BEING INFORMED of the violation through a
14 report inmate grievance, failed to remedy the wrong[,] (3) they created a policy and
15 custom under which unconstitutional practices occurred [sic], and allowed the
continuance of such a policy and custom, (4) these defendants were grossly
negligent in supervising subordinates who [] committed wrongful acts, and these
defendants exhibited deliberate indifference to the rights of the plaintiff in this
action, by failing to act on information indicating that unconstitutional [sic] acts were
occurring.

17 (Id.) Plaintiff claims that he "reported the constitutional violations of defendants to the appropriate
18 staff via letter grievances [and that he] appeal[ed] his complaints all the way to the Sheriff, to no
19 avail." (Id.) He adds:

20 The activities that the Plaintiff was involved in and retaliated against were his
21 prior litigation against San Mateo Court Officials, his religious activities, his
22 sexuality were all protected by the United States Constitution and those protected
activities [sic] were the motivating factors for the retaliation by the supervisory
defendants. The retaliatory actions served no legitimate penological interest.

23 (Id.) Plaintiff states that he "is Jewish and has a lifelong history of abiding by the tenets of his
24 religion" and that he "was denied his right to exercise his religion based on retaliatory, evil and
25 malicious actions of the defendants collectively³." (Id. at 4 (footnote in original).) He claims that he

27 ³ Defendants in this section of the brief refers exclusively to Defendants Horsely, Trindle[,]
Sanchez[,] Randleman and Bowen.

1 "previously brought extensive litigation [against] San Mateo Cou[n]ty Sheriff[']s Office employees,
2 County Jail Correctional staff, Correctional Health Services, San Mateo County Service League
3 employees, and the Court of San Mateo, al[l] protected constitutional right." (Id.) In attempting to
4 provide a "nexus between the filing of his prior actions and the alleged retaliatory actions," Plaintiff
5 states:

6 The first of the denial of plaintiff[']s religious rights came after the plaintiff met
7 with [Defendant] Bowen after requesting to have a rabbi visit the plaintiff and the
discussion turned to the plaintiff[']s prior litigation of GOLDSTEIN VS RUTH
ANN FLAMENT, No [sic], Dist Cal Case No: Cv-00-0598 SBA.

8 (Id.) Plaintiff also claims that Defendant Bowen "counseled Plaintiff that his past behaviors were his
9 problem and that he should be careful not to repeat his complaint filing against County Officials."
10 (Id. at 11.) Based on these two incidents of communication with Defendant Bowen about his
11 previous complaints, Plaintiff "considered all the problems that he was having and concluded that the
12 litigations and grievances [he] had brought against San Mateo County Officials and Correctional
13 Health Services" were the reason that "the Jail Administration was directing, participating in
14 retaliatory actions against plaintiff, ordering subordinates to violate the constitutional rights of
15 plaintiff." (Id.)

16 The Court finds that Plaintiff still has not cured the deficiencies of his retaliation claim
17 because he does not allege any nexus between the filing of his prior actions and the alleged
18 retaliatory actions. It seems that Plaintiff had two conversations with Defendant Bowen about his
19 previous civil rights actions prior to the alleged denial of his request for a rabbi and various religious
20 items. However, as the Court has mentioned in its prior order:

21 Retaliation is not established simply by showing adverse activity by defendant after
22 protected speech; rather, plaintiff must show a nexus between the two. See Huskey
v. City of San Jose, 204 F.3d 893, 899 (9th Cir. 2000) (retaliation claim cannot rest
on the logical fallacy of post hoc, ergo propter hoc, i.e., "after this, therefore
because of this"). Compare id. (summary judgment proper against plaintiff who
could only speculate that adverse employment decision was due to his negative
comments about his supervisor six or seven months earlier) with Soranno's Gasco,
Inc. v. Morgan, 874 F.2d 1310, 1315-16 (9th Cir. 1989) (evidence of timing and
nature of suspensions sufficient to infer retaliatory motive).

26 (Feb. 9, 2011 Order at 5.) Simply claiming that Defendant Bowen mentioned his previous civil
27 rights actions prior to the alleged violation of his rights (which the Court has already found to be a
cognizable RLUIPA claim) does not create a nexus between the two. Furthermore, the Court finds

1 that even if Plaintiff had sufficiently created a nexus between the two, he has not alleged that he has
2 exhausted his administrative remedies as to his retaliation claim. In fact, he states that he reported
3 "constitutional violations of defendant to the appropriate staff via letter grievances;" however, he
4 does not specify that he exhausted his alleged retaliation claims against these Defendants.
5 Accordingly, Plaintiff's retaliation claim against Defendants Horsely, Trindle, Sanchez, Randleman
6 and Bowen is DISMISSED without prejudice and without further leave to amend. As the Court
7 mentioned above, Plaintiff was previously directed to cure this pleading deficiency in the July 29,
8 2008 Order in Case No. C 05-3209 SBA (PR); however, he did not do so. Therefore, because
9 Plaintiff has been given several chances to amend this claim (and each time he has failed to correct
10 the pleading deficiencies), the Court finds that giving him any more opportunities to amend would be
11 futile.

12 The Court will not consider any of Plaintiff's allegations in his amendment to the complaint
13 or any attachments relating to his incarceration at SMCJ in 2010. Any new claims dealing with
14 Plaintiff's 2010 incarceration should be raised in a new civil rights action.

15 As mentioned above, Defendants have filed an answer to Plaintiff's amendment to the
16 complaint. However, the Court's findings above -- that the amendment to the complaint fails to
17 correct the pleading deficiencies of his retaliation claim -- make Defendants' answer unnecessary.
18 Because the Court need not consider Defendants' answer to the amendment to the complaint,
19 Plaintiff's "Motion to Strike the Defendants['] Answer to Plaintiff's First Amended Complaint or
20 O[r]der Directing Defendants to Retitle [and] Refile the Appropriate Document" (docket no. 61) is
21 DENIED as moot.⁴

22 **II. Defendant Bowen**

23 ⁴ In Plaintiff's "Motion to Strike the Defendants['] Answer to Plaintiff's First Amended
24 Complaint or O[r]der Directing Defendants to Retitle [and] Refile the Appropriate Document," he
25 states: "Clearing this issue up now would save judicial time and cost later should the plaintiff seek to
26 file an Amended Complaint in this action, as he has a right to do as a matter of law." (Pl.'s June 7,
27 2011 Mot. at 2.) However, under the Federal Rules of Civil Procedure, a plaintiff generally may
amend his complaint once as a matter of course within twenty-one days after service of a responsive
pleading or within twenty-one days after the service of a motion filed under Federal Rule of Civil
Procedure 12(b), (e), or (f), whichever is earlier. See Fed. R. Civ. P. 15(a)(1)(B). Here, twenty-one
days have already passed since Defendants filed their answer to the complaint on April 12, 2011;
therefore, Plaintiff may not amend as of right. Id. Instead, Plaintiff must obtain Defendants' consent
or leave of court to amend his complaint. See id. at (a)(2).

To date, Defendant Bowen has not appeared in this action. As mentioned above, the San Mateo County Counsel's Office does not represent Defendant Bowen. (May 24, 2011 Letter from Ceide Zapparoni, Esq. at 1.) Deputy County Counsel Zapparoni has supplied the Court with Defendant Bowen's last known address. Accordingly, the Clerk is directed to mail a Notice of Lawsuit and Request for Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint and all attachments thereto (docket no. 1) and copies of the February 9, 2011 Order as well as this Order to Former Head SMCJ Chaplain Reverend Carole Bowen at her last-known address, the Service League of San Mateo County, 727 Middlefield Road, Redwood City, CA 94063. The parties shall abide by the briefing schedule outlined below.

Plaintiff has filed a "Motion for [an] Order Directing San Mateo County Counsel's Office to Appear on Behalf of Defendant Carole Bowen." Defendant Bowen must be served first before the Court can direct the San Mateo County Counsel's Office to appear on her behalf. Accordingly, in light of the Court's directions to serve Defendant Bowen above, Plaintiff's motion (docket no. 34) is DENIED.

III. Motions Relating to Plaintiff's Deposition/Defendants' Extension of Time Request

As mentioned above, Plaintiff's May 19, 2011 deposition did not take place. The Court has previously found that the allegations in Plaintiff's complaint state a cognizable RLUIPA claim against Defendants Horsely, Trindle, Sanchez, Randleman and Bowen. The circumstances surrounding such allegations are critical to determining the viability of Plaintiff's claims. Moreover, Plaintiff's evidence will largely consist of his version of the events. Defendants are entitled to discover Plaintiff's version of the events in order to properly evaluate the case, the possibility of a dispositive motion and/or settlement, and their trial strategy. The Court directs the parties to schedule another deposition of Plaintiff, as directed below. Plaintiff shall attend Defendants' properly noticed deposition even if he is not represented by counsel. If he does not complete this deposition, the Court will dismiss this action with prejudice for failure to prosecute under Rule 41(b), failure to comply with a court order under Rule 37(b), and failure to attend his deposition under Rule 37(d).

As mentioned above, Plaintiff claims that his currently prescribed medications could "impair

1 [his] ability to adequately participate in the Deposition." (Mot. to Vacated at 2.) Plaintiff also
2 claims that he "must not stop taking the medications unless advised to by a doctor, and then only via
3 certain procedures." (*Id.*) However, the Court notes that Plaintiff does not support his claims with
4 any proof, such as a letter from his doctor. Assuming Plaintiff's claims are true, the Court
5 encourages prison officials at Solano to allow Plaintiff to obtain medical permission to reduce the
6 amount of medication he takes prior to the deposition if he refuses to attend his deposition unless his
7 medications are reduced.

8 Accordingly, the Court GRANTS Defendants' request for an extension of time to file a
9 dispositive motion up to and including **July 14, 2011** so as to give them time to take Plaintiff's
10 deposition (docket no. 40).

11 Plaintiff has filed a "Motion to Strike the Declaration of Ceide Zapparoni in Support of
12 Defendants['] Response to Plaintiff's Request to Vacate Plaintiff's Deposition Noticed for May 19,
13 2011; Defendants['] Request for Extension of Time to File Dispositive Motion." Plaintiff correctly
14 notes that there is an error on page one lines twenty-two and twenty-three of the declaration. Deputy
15 County Counsel Zapparoni's declaration in support of Defendants' motion states that their response
16 was to "Plaintiff's Request for Extension Of Time To File Dispositive Motion for May 19, 2011."
17 (Zapparoni Decl. at 1.) However, it is evident that this is a typographical error, and Deputy County
18 Counsel Zapparoni meant to state that their response was to "Plaintiff's Request to Vacate Plaintiff's
19 Deposition Noticed for May 19, 2011," which is clearly stated in the title as well as in the body of
20 their motion. Accordingly, the Court DENIES Plaintiff's "Motion to Strike the Declaration of Ceide
21 Zapparoni in Support of Defendants['] Response to Plaintiff's Request to Vacate Plaintiff's
22 Deposition Noticed for May 19, 2011; Defendants['] Request for Extension of Time to File
23 Dispositive Motion" (docket no. 58).

24 Plaintiff's "Request to Vacate Deposition of Darryl Lee Goldstein," which was set for May
25 19, 2011, (docket no. 41) is DENIED as moot. His "Request for the Court to Stay It's [sic] Ruling on
26 the Defendants['] Request for Extension of Time to File Dispositive Motion Until May 27, 2011"
(docket no. 50) is also DENIED as moot.

27 **IV. Pro Se Prisoner Settlement Program**

1 Plaintiff filed a "Request to Have Case Referred to the Pro Se Prisoner Settlement Program."

2 The Northern District of California has established a Pro Se Prisoner Settlement Program.

3 Certain prisoner civil rights cases may be referred to a neutral magistrate judge for settlement
4 proceedings. The proceedings will consist of one or more conferences as determined by Magistrate
5 Judge Nandor Vadas.

6 Good cause appearing, the Court GRANTS Plaintiff's request and the present case will be
7 REFERRED to Magistrate Judge Vadas for settlement proceedings pursuant to the Pro Se Prisoner
8 Settlement Program. The proceedings shall take place within **ninety (90) days** after the date of this
9 Order. Magistrate Judge Vadas shall coordinate a time, date and place for a settlement proceeding
10 with all interested parties and/or their representatives and, within **ten (10) days** after the conclusion
11 of the settlement proceedings, file with the Court a report regarding the settlement proceedings.

CONCLUSION

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

13 1. Upon reviewing Plaintiff's amendment to the complaint, his retaliation claim against
14 Defendants Horsely, Trindle, Sanchez, Randleman and Bowen is DISMISSED without prejudice and
15 without further leave to amend. Any new claims dealing with his 2010 incarceration should be
16 raised in a new civil rights action. Because the Court need not consider Defendants' answer to the
17 amendment to the complaint, Plaintiff's "Motion to Strike the Defendants['] Answer to Plaintiff's
18 First Amended Complaint or O[r]der Directing Defendants to Retitle [and] Refile the Appropriate
19 Document" (docket no. 61) is DENIED as moot.

20 2. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of
21 Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint and
22 all attachments thereto (docket no. 1) and copies of the February 9, 2011 Order as well as this Order
23 to **Former Head SMCJ Chaplain Reverend Carole Bowen at the Service League of San Mateo**
24 **County, 727 Middlefield Road, Redwood City, CA 94063.** The Clerk shall also mail a copy of this
25 Order to Deputy County Counsel Zapparoni (who represents Defendants Horsely, Trindle, Sanchez
26 and Randleman), as well as to Plaintiff. In light of the Court's directions to serve Defendant Bowen

1 above, Plaintiff's "Motion for [an] Order Directing San Mateo County Counsel's Office to Appear on
2 Behalf of Defendant Carole Bowen" (docket no. 34) is DENIED.

3 Defendant Bowen is cautioned that Rule 4 of the Federal Rules of Civil Procedure requires
4 Defendant Bowen to cooperate in saving unnecessary costs of service of the summons and
5 complaint. Pursuant to Rule 4, if Defendant Bowen, after being notified of this action and asked by
6 the Court, on behalf of Plaintiff, to waive service of the summons, fails to do so, Defendant Bowen
7 will be required to bear the cost of such service unless good cause be shown for their failure to sign
8 and return the waiver form. If service is waived, this action will proceed as if Defendant Bowen had
9 been served on the date that the waiver is filed, except that pursuant to Rule 12(a)(1)(B), Defendant
10 Bowen will not be required to serve and file an answer before **sixty (60) days** from the date on which
11 the request for waiver was sent. (This allows a longer time to respond than would be required if
12 formal service of summons is necessary.) Defendant Bowen is asked to read the statement set forth
13 at the foot of the waiver form that more completely describes the duties of the parties with regard to
14 waiver of service of the summons. If service is waived after the date provided in the Notice but
15 before Defendant Bowen has been personally served, the Answer shall be due **sixty (60) days** from
16 the date on which the request for waiver was sent or **twenty (20) days** from the date the waiver form
is filed, whichever is later.

17 Defendant Bowen shall answer the complaint in accordance with the Federal Rules of Civil
18 Procedure. While Defendants Horsely, Trindle, Sanchez and Randleman are directed to abide by the
19 briefing schedule outlined in the Court's February 9, 2010 Order (although they have been granted an
20 extension to file their dispositive motion up to and including **July 14, 2011**), the following briefing
21 schedule shall govern the dispositive motion filed by Defendant Bowen in this action:

22 a. No later than **thirty (30) days** from the date Defendant Bowen's answer is due,
23 Defendant Bowen shall file a motion for summary judgment or other dispositive motion. The motion
24 shall be supported by adequate factual documentation and shall conform in all respects to Federal
25 Rule of Civil Procedure 56. Defendant Bowen may join in Defendants Horsely's, Trindle's,
26 Sanchez's and Randleman's dispositive motion that is due on July 14, 2011. If Defendant Bowen is
27

1 of the opinion that this case cannot be resolved by summary judgment, Defendant Bowen shall so
2 inform the Court prior to the date the summary judgment motion is due. All papers filed with the
3 Court shall be promptly served on Plaintiff.

4 b. Plaintiff's opposition to the dispositive motion shall be filed with the Court and
5 served on Defendant Bowen no later than **thirty (30) days** after the date on which Defendant
6 Bowen's motion is filed. The Ninth Circuit has held that the following notice should be given to pro
7 se plaintiffs facing a summary judgment motion:

8 The defendant has made a motion for summary judgment by which they seek
9 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.

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

17 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc).

18 Plaintiff is advised to read Rule 56 of the Federal Rules of Civil Procedure and Celotex Corp.
19 v. Catrett, 477 U.S. 317 (1986) (party opposing summary judgment must come forward with
evidence showing triable issues of material fact on every essential element of his claim). Plaintiff is
21 cautioned that because he bears the burden of proving his allegations in this case, he must be
22 prepared to produce **evidence** in support of those allegations when he files his opposition to
Defendant Bowen's dispositive motion. Such evidence may include sworn declarations from himself
24 and other witnesses to the incident, and copies of documents authenticated by sworn declaration.
Plaintiff will not be able to avoid summary judgment simply by repeating the allegations of his
complaint.

27 c. Defendant Bowen shall file a reply brief no later than **fifteen (15) days** after
the date Plaintiff's opposition is filed.

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

3 3. The Court directs Defendants Horsely, Trindle, Sanchez and Randleman to notice
4 another deposition of Plaintiff. Plaintiff shall attend the properly noticed deposition even if he is not
5 represented by counsel. If he does not complete this deposition, the Court will dismiss this action
6 with prejudice for failure to prosecute under Rule 41(b), failure to comply with a court order under
7 Rule 37(b), and failure to attend his deposition under Rule 37(d). Unless there are valid security
8 concerns, the Court encourages prison officials at Solano to allow Plaintiff to obtain medical
9 permission to reduce the amount of medication he takes prior to the deposition if he refuses to attend
10 his deposition unless his medications are reduced, so that time and expenses are not wasted, the
11 deposition can go forward and the case can be dismissed if it does not. However, even if prison
12 officials do not provide the aforementioned medical permission, the Court will dismiss Plaintiff's
13 case if he fails to attend and complete the deposition without proof from a doctor that he was
14 physically and mentally unable to do so.

15 4. In order to give Defendants Horsely, Trindle, Sanchez and Randleman time to take
16 Plaintiff's deposition, the Court GRANTS their request for an extension of time to file a dispositive
17 motion up to and including **July 14, 2011** (docket no. 40). Because Plaintiff only points to a
18 typographical error in Deputy County Counsel Zapparoni's declaration, the Court DENIES Plaintiff's
19 "Motion to Strike the Declaration of Ceide Zapparoni in Support of Defendants['] Response to
20 Plaintiff's Request to Vacate Plaintiff's Deposition Noticed for May 19, 2011; Defendants['] Request
for Extension of Time to File Dispositive Motion" (docket no. 58).

21 5. Plaintiff's "Request to Vacate Deposition of Darryl Lee Goldstein," which was set for
22 May 19, 2011, (docket no. 41) is DENIED as moot. His "Request for the Court to Stay It's [sic]
23 Ruling on the Defendants[] Request for Extension of Time to File Dispositive Motion Until May 27,
24 2011" (docket no. 50) is also DENIED as moot.

25 6. The Court GRANTS Plaintiff's "Request to Have Case Referred to the Pro Se Prisoner
26 Settlement Program" (docket no. 48). Accordingly, this action has been referred to the Pro Se
27 Prisoner Settlement Program. **The Clerk shall provide a copy of the court documents that are**

not available electronically, including a copy of this Order, to Magistrate Judge Vadas in Eureka, California.

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

8. Extensions of time are not favored, though reasonable extensions will be granted. Any motion for an extension of time must be filed no later than **fifteen (15) days** prior to the deadline sought to be extended.

9. This Order terminates Docket nos. 34, 40, 41, 48, 50, 58 and 61.

IT IS SO ORDERED.

DATED: 6/13/11

Saundra B Armstrong
SAUNDRA BROWN ARMSTRONG
United States District Judge

1
2
3 UNITED STATES DISTRICT COURT
4 FOR THE
5 NORTHERN DISTRICT OF CALIFORNIA

6 DARRYL LEE GOLDSTEIN,

7 Plaintiff,

Case Number: CV08-04840 SBA

8 v.

9 DON HORSLEY et al,

10 Defendant.

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CERTIFICATE OF SERVICE

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 June 15, 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 - Solano
2100 Peabody Rd.
Vacaville, CA 95696

Dated: June 15, 2011

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