

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

3
4 ERIC L. GONZALEZ,

No. C 09-00953 CW (PR)

5 Plaintiff,

ORDER OF SERVICE FOLLOWING
REMAND

6 v.

7 P. MULLEN, et al.,

8 Defendants.
9 _____/

10 Plaintiff, a state prisoner incarcerated at the Correctional
11 Training Facility (CTF), filed this pro se civil rights action
12 pursuant to 42 U.S.C. § 1983, alleging the violation of his First,
13 Eighth and Fourteenth Amendment rights and seeking injunctive
14 relief. His motion for leave to proceed in forma pauperis has been
15 granted.

16 By Order filed May 14, 2010, the Court conducted a preliminary
17 screening of the allegations in Plaintiff's first amended
18 complaint, pursuant to 28 U.S.C. § 1915A. The Court determined
19 that none of Plaintiff's allegations stated a claim for relief
20 under § 1983 and dismissed the first amended complaint with
21 prejudice.

22 On appeal, the Ninth Circuit affirmed the dismissal of all but
23 two of Plaintiff's claims. Specifically, the Ninth Circuit held:

24 [D]ismissal of Gonzalez's Eighth Amendment claim
25 concerning shower shoes was improper at this early stage
26 because Gonzalez's allegations that his inability to
27 obtain shower shoes put him at risk of exposure to
28 serious bacteria were not frivolous. See Keenan v. Hall,
83 F.3d 1083, 1091 (9th Cir. 1996)(indigent inmates have
the right to personal hygiene supplies).

Dismissal of Gonzalez's equal protection claim
concerning differential treatment of male and female

1 inmates was also improper at this early stage because
2 Gonzalez alleged facts suggesting that prison officials
3 discriminated against him based on his gender without
penological justification. See [Washington v. Davis, 426
U.S. 229, 238-40 (1976).]

4 Docket No. 19 (Memorandum) at 3. Consequently, the Ninth Circuit
5 vacated the Order of dismissal with respect to the above two claims
6 and remanded to this Court for further proceedings.

7 Accordingly, the Court orders as follows:

8 1. The Clerk of the Court shall mail a Notice of Lawsuit and
9 Request for Waiver of Service of Summons, two copies of the Waiver
10 of Service of Summons, a copy of the first amended complaint and
11 all attachments thereto (docket no. 8) and a copy of this Order to
12 CTF Warden Randy Grounds, CTF Appeals Coordinator P. Mullen, and
13 Matthew Cate, Secretary of the California Department of Corrections
14 and Rehabilitation in Sacramento.

15 The Clerk of the Court shall also mail a copy of the complaint
16 and a copy of this Order to the State Attorney General's Office in
17 San Francisco. Additionally, the Clerk shall mail a copy of this
18 Order to Plaintiff.

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

13 3. Defendants shall answer the complaint in accordance with
14 the Federal Rules of Civil Procedure. The following briefing
15 schedule shall govern dispositive motions in this action:

16 a. No later than ninety (90) days from the date their
17 answer is due, Defendants shall file a motion for summary judgment
18 or other dispositive motion. The motion shall be supported by
19 adequate factual documentation and shall conform in all respects to
20 Federal Rule of Civil Procedure 56. If Defendants are of the
21 opinion that this case cannot be resolved by summary judgment, they
22 shall so inform the Court prior to the date the summary judgment
23 motion is due. All papers filed with the Court shall be promptly
24 served on Plaintiff.

25 b. Plaintiff's opposition to the dispositive motion
26 shall be filed with the Court and served on Defendants no later
27 than sixty (60) days after the date on which Defendants' motion is
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1 filed. The Ninth Circuit has held that the following notice should
2 be given to pro se plaintiffs facing a summary judgment motion:

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

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

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

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

4 c. Defendants shall file a reply brief no later than
5 thirty (30) days after the date Plaintiff's opposition is filed.

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

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

13 5. All communications by Plaintiff with the Court must be
14 served on Defendants, or Defendants' counsel once counsel has been
15 designated, by mailing a true copy of the document to Defendants or
16 Defendants' counsel.

17 6. It is Plaintiff's responsibility to prosecute this case.
18 Plaintiff must keep the Court informed of any change of address and
19 must comply with the Court's orders in a timely fashion.

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

24 IT IS SO ORDERED.

25 DATED: 12/1/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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

4 ERIC L. GONZALEZ,

5 Plaintiff,

6 v.

7 P. MULLEN et al,

8 Defendant.

Case Number: CV09-00953 CW

CERTIFICATE OF SERVICE

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

11 That on December 1, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Eric L. Gonzalez E66196
16 State Prison Correctional Training Facility
17 P.O. Box 689
18 Fox Wing 235 Low
19 Soledad, CA 93960-0689

20 Dated: December 1, 2011

21 Richard W. Wiekling, Clerk
22 By: Nikki Riley, Deputy Clerk
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