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

DUKE BOLTER,	No. C 09-04587 CW (PR)
Plaintiff,	ORDER REVIEWING AMENDED COMPLAINT UNDER 28 U.S.C. § 1915A; AND DIRECTING PLAINTIFF TO FILE PROOF OF SERVICE OR SHOW CAUSE
v.	
FRANCISCO JACQUES, et al.,	
Defendants.	

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INTRODUCTION

Plaintiff, a state prisoner, has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging that violations of his constitutional rights. Plaintiff also raises state law claims.

On May 3, 2010, Plaintiff filed an amended complaint.

Venue is proper because the events giving rise to the claim are alleged to have occurred at Pelican Bay State Prison (PBSP), which is located in this judicial district. See 28 U.S.C. § 1391(b).

In his amended complaint, Plaintiff names the following Defendants: PBSP Warden Francisco Jacques; Captain R. Johnson; Lieutenant R. L. Graves; Sergeant M. Weningham; Officer M. Cleary; Chief Medical Officer Michael C. Sayre; Health Care Manage Maureen McLean; Family Nurse Practitioner Sue Risenhoover; Registered Nurse James Flowers and Doe Defendants One through Twenty-Five.

Plaintiff seeks monetary damages as well as declaratory and injunctive relief.

The Court now reviews the allegations in the amended complaint and directs Plaintiff, who has paid the filing fee in this matter,

1 to show proof that he has served those Defendants against whom  
2 cognizable claims for relief have been found, as directed below.

3 DISCUSSION

4 I. Standard of Review

5 A federal court must conduct a preliminary screening in any  
6 case in which a prisoner seeks redress from a governmental entity  
7 or officer or employee of a governmental entity. 28 U.S.C.  
8 § 1915A(a). In its review, the court must identify any cognizable  
9 claims and dismiss any claims that are frivolous, malicious, fail  
10 to state a claim upon which relief may be granted or seek monetary  
11 relief from a defendant who is immune from such relief. Id.  
12 § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.  
13 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
14 1988).

15 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
16 allege two essential elements: (1) that a right secured by the  
17 Constitution or laws of the United States was violated, and  
18 (2) that the alleged violation was committed by a person acting  
19 under the color of state law. West v. Atkins, 487 U.S. 42, 48  
20 (1988).

21 II. Legal Claims

22 A. Excessive Force

23 A prisoner has the right to be free from cruel and unusual  
24 punishment, including physical abuse by guards. Whenever prison  
25 officials stand accused of using excessive physical force in  
26 violation of the Eighth Amendment, the core judicial inquiry is  
27 whether force was applied in a good-faith effort to maintain or  
28 restore discipline, or maliciously and sadistically to cause harm.

1 Hudson v. McMillian, 503 U.S. 1, 6 (1992) (citing Whitley v.  
2 Albers, 475 U.S. 312, 317 (1986)).

3 Plaintiff alleges that from November 13 through 16, 2008, he  
4 was subjected to excessive force by Defendants Weningham and  
5 several other PBSP officers when he was placed in "a contraband  
6 surveillance watch (CSW) cell on the directions of Defendant  
7 Weningham, for suspicion of swallowing some type of contraband."  
8 (Am. Compl. at 7.) Specifically, on November 13, 2008, Defendant  
9 Cleary and Officer John Doe escorted Plaintiff into the CSW cell  
10 "on the directions of Defendant Weningham." (Id.) Plaintiff  
11 claims that he sustained injuries due to Defendants' process of  
12 preparing him for the new placement in the CSW cell and  
13 deliberately subjecting him to severe physical and mental pain and  
14 suffering with no regard to their actions. (Id. at 7-14.) As part  
15 of the process, Plaintiff's legs were shackled and "then tightly  
16 taping each leg and waistband area of the boxer shorts that  
17 Plaintiff was wearing." (Id. at 7.) According to Plaintiff, the  
18 taping process was very painful and caused skin damage. (Id. at  
19 13.) He was released on November 16, 2008, "and escorted back to  
20 his building/pod, with no contraband ever being found." (Id. at  
21 14.)

22 Liberally construed, Plaintiff's amended complaint states a  
23 cognizable Eighth Amendment claim against Defendants Weningham and  
24 Doe Defendants One through Twenty-Five.

25 Plaintiff alleges that Defendant Cleary escorted him to the  
26 CSW cell "on the directions of Defendant Weningham." (Am. Compl.  
27 at 7.) Plaintiff does not allege that Defendant Cleary  
28 participated in the taping process. Accordingly, Plaintiff's claim

1 fails to state an Eighth Amendment violation against Defendant  
2 Cleary; therefore, it is DISMISSED WITH LEAVE TO AMEND. Plaintiff  
3 may file an amendment to the complaint to allege, if he can  
4 truthfully do so, that Defendant Cleary used excessive force  
5 against him.

6 B. Deliberate Indifference Claims

7 Plaintiff's allegations also state claims for deliberate  
8 indifference to his basic human needs and to his serious medical  
9 needs.

10 1. Basic Human Needs

11 The Constitution does not mandate comfortable prisons, but  
12 neither does it permit inhumane ones. See Farmer v. Brennan, 511  
13 U.S. 825, 832 (1994). The treatment a prisoner receives in prison  
14 and the conditions under which he is confined are subject to  
15 scrutiny under the Eighth Amendment. See Helling v. McKinney, 509  
16 U.S. 25, 31 (1993). The Eighth Amendment imposes duties on prison  
17 officials, who must provide all prisoners with the basic  
18 necessities of life such as food, clothing, shelter, sanitation,  
19 medical care and personal safety. See Farmer, 511 U.S. at 832;  
20 DeShaney v. Winnebago County Dep't of Social Servs., 489 U.S. 189,  
21 199-200 (1989); Hoptowit v. Ray, 682 F.2d 1237, 1246 (9th Cir.  
22 1982). A prison official violates the Eighth Amendment when two  
23 requirements are met: (1) the deprivation alleged must be,  
24 objectively, sufficiently serious, Farmer, 511 U.S. at 834 (citing  
25 Wilson v. Seiter, 501 U.S. 294, 298 (1991)), and (2) the prison  
26 official possesses a sufficiently culpable state of mind, id.  
27 (citing Wilson, 501 U.S. at 297).

28 In determining whether a deprivation of a basic necessity is

1 sufficiently serious to satisfy the objective first component of an  
2 Eighth Amendment claim, a court must consider the circumstances,  
3 nature, and duration of the deprivation. The more basic the need,  
4 the shorter the time it may be withheld. See Johnson v. Lewis, 217  
5 F.3d 726, 731 (9th Cir. 2000). Substantial deprivations of  
6 shelter, food, drinking water or sanitation for four days, for  
7 example, are sufficiently serious to satisfy the objective  
8 component of an Eighth Amendment claim.

9 Plaintiff states that Defendants were deliberately indifferent  
10 to his physical and mental well being by depriving him "of his  
11 basic human needs of sufficient ventilation, warmth and personal  
12 hygiene and to be free from the intentional and unnecessary  
13 infliction of pain and suffering" while he was placed in the CSW  
14 cell from November 13 through 16, 2008. (Am. Compl. at 14.)  
15 Plaintiff has adequately pled a cognizable deliberate indifference  
16 claim against Defendants Weningham and Doe Defendants One through  
17 Twenty-Five.

18 Plaintiff's claim against Defendant Cleary -- who escorted him  
19 to the CSW cell at Defendant Weningham's direction -- fails to  
20 amount to an deliberate indifference claim; therefore, it is  
21 DISMISSED WITH LEAVE TO AMEND. Plaintiff may file an amendment to  
22 the complaint to allege facts from which it could be inferred that  
23 Defendant Cleary was deliberately indifferent to Plaintiff's basic  
24 human needs.

25 2. Serious Medical Needs

26 Deliberate indifference to serious medical needs violates the  
27 Eighth Amendment's proscription against cruel and unusual  
28 punishment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976);

1 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled  
2 on other grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133,  
3 1136 (9th Cir. 1997) (en banc); Jones v. Johnson, 781 F.2d 769, 771  
4 (9th Cir. 1986). A determination of "deliberate indifference"  
5 involves an examination of two elements: the seriousness of the  
6 prisoner's medical need and the nature of the defendant's response  
7 to that need. See McGuckin, 974 F.2d at 1059. A "serious" medical  
8 need exists if the failure to treat a prisoner's condition could  
9 result in further significant injury or the "unnecessary and wanton  
10 infliction of pain." Id. (citing Estelle v. Gamble, 429 U.S. at  
11 104). A prison official is deliberately indifferent if he or she  
12 knows that a prisoner faces a substantial risk of serious harm and  
13 disregards that risk by failing to take reasonable steps to abate  
14 it. Farmer v. Brennan, 511 U.S. 825, 837 (1994).

15 Plaintiff's allegations that he suffered injuries from being  
16 placed in the CSW cell, including "red welts/both legs&waist  
17 area/ankles&wrists, rash under both armpits, swollen right knee,"  
18 supports an inference that he had a serious medical need.  
19 Liberally construed, Plaintiff's allegations that prison medical  
20 staff failed to provide adequate medical treatment for his injuries  
21 and that "his medical condition in his right knee has deteriorated"  
22 state a cognizable deliberate indifference claim against Defendants  
23 Risenhoover and Flowers.

24 Plaintiff also states a deliberate indifference claim against  
25 those Defendants who reviewed Plaintiff's appeal relating to his  
26 injuries and did not remedy the constitutional violation.  
27 Therefore, this claim may proceed against Defendants Sayre and  
28 McLean.

1 C. Retaliation

2 "Within the prison context, a viable claim of First Amendment  
3 retaliation entails five basic elements: (1) An assertion that a  
4 state actor took some adverse action against an inmate (2) because  
5 of (3) that prisoner's protected conduct, and that such action  
6 (4) chilled the inmate's exercise of his First Amendment rights,  
7 and (5) the action did not reasonably advance a legitimate  
8 correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th  
9 Cir. 2005) (footnote omitted). To prove retaliation, a plaintiff  
10 must show that the defendants took adverse action against him or  
11 her that "would chill or silence a person of ordinary firmness from  
12 future First Amendment activities." White v. Lee, 227 F.3d 1214,  
13 1228 (9th Cir. 2000) (citing Mendocino Env'tl. Ctr. v. Mendocino  
14 County, 192 F.3d 1283, 1300 (9th Cir. 1999)).

15 First, Plaintiff alleges that Defendant Weningham's actions of  
16 placing him in the CSW cell and "refusing to allow Plaintiff to  
17 voluntarily submit to an x-ray examination support the inference  
18 that Defendant Weningham's actions were behind a past criminal  
19 proceeding [sic]." (Am. Compl. at 19.) Specifically, Plaintiff  
20 claims that on November 13, 2008, Defendant Weningham "approached  
21 [his] cell smiling and made a statement about [Plaintiff]  
22 swallowing some type of contraband which Plaintiff adamantly  
23 denied." (Id. at 6.) Before Defendant Weningham started to walk  
24 away, he "stated to Plaintiff (quote) I told you that we would  
25 never forget." (Id.) Plaintiff claims that Defendant Weningham's  
26 statement was "in reference to a 1999 criminal case which Plaintiff  
27 was involved with up until February 2007." (Id.) However, the  
28 placement in the CSW cell occurred years after the criminal case

1 was resolved. This does not, without more, state a claim for  
2 retaliation; rather, Plaintiff must explain how the criminal case  
3 involved Defendant Weningham, how it amounted to protected conduct,  
4 and why he thought Defendant Weningham's comment referred to it.  
5 See Huskey v. City of San Jose, 204 F.3d 893, 899 (9th Cir. 2000)  
6 (retaliation claim cannot rest on the logical fallacy of post hoc,  
7 ergo propter hoc, i.e., "after this, therefore because of this").  
8 Here, Plaintiff does not allege any nexus between the CSW cell  
9 placement and his criminal case. While Plaintiff claims that  
10 prison officials placed him in the CSW cell without a legitimate  
11 administrative purpose, there is no indication that prison  
12 officials would not have placed him in the CSW cell even if he had  
13 not been involved in the prior criminal case. Cf. Sher, 739 F.2d  
14 at 82 (no retaliatory transfer claim stated where administrative  
15 reasons relied on by defendants would have caused them to transfer  
16 prisoner whether or not they also entertained thoughts of  
17 retaliation). Accordingly, Plaintiff's retaliation claim against  
18 Defendant Weningham based on placement in the CSW cell is DISMISSED  
19 WITH LEAVE TO AMEND. Plaintiff may file an amendment to the  
20 complaint to allege facts from which it could be inferred that the  
21 placement in the CSW cell was in retaliation for the exercise of  
22 his constitutional rights.

23 D. Supervisory Liability Claim

24 Plaintiff sues Defendants Jacques, Johnson and Graves in their  
25 supervisory capacity. Plaintiff does not allege facts  
26 demonstrating that these Defendants violated his federal rights,  
27 but seems to claim they are liable based on the conduct of their  
28 subordinates, Defendants Weningham and Cleary. There is, however,



1 no respondeat superior liability under § 1983 solely because a  
2 defendant is responsible for the actions or omissions of another.  
3 See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). A  
4 supervisor generally "is only liable for constitutional violations  
5 of his subordinates if the supervisor participated in or directed  
6 the violations, or knew of the violations and failed to act to  
7 prevent them." Id. A supervisor may also be held liable if he or  
8 she implemented "a policy so deficient that the policy itself is a  
9 repudiation of constitutional rights and is the moving force of the  
10 constitutional violation." Redman v. County of San Diego, 942 F.2d  
11 1435, 1446 (9th Cir. 1991) (en banc).

12 Plaintiff's supervisory liability claim against Defendants  
13 Jacques, Johnson and Graves is therefore DISMISSED WITH LEAVE TO  
14 AMEND. He may file an amendment to the complaint that alleges  
15 supervisory liability under the standards explained above.

16 E. Claim Against Doe Defendants

17 Plaintiff identifies Doe Defendants One through Twenty-Five  
18 whose names he intends to learn through discovery. The use of Doe  
19 Defendants is not favored in the Ninth Circuit. See Gillespie v.  
20 Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). However, where the  
21 identity of alleged defendants cannot be known prior to the filing  
22 of a complaint the plaintiff should be given an opportunity through  
23 discovery to identify them. Id. Failure to afford the plaintiff  
24 such an opportunity is error. See Wakefield v. Thompson, 177 F.3d  
25 1160, 1163 (9th Cir. 1999). Accordingly, the claims against the  
26 Doe Defendants are DISMISSED from this action without prejudice.  
27 Should Plaintiff learn their identity through discovery, he may  
28

1 move to file a second amended complaint to add them as named  
2 defendants. See Brass v. County of Los Angeles, 328 F.3d 1192,  
3 1195-98 (9th Cir. 2003).

4 F. State Law Claims

5 Plaintiff alleges that Defendants' deliberate indifference to  
6 his serious medical needs violates various provisions of California  
7 constitutional, statutory and tort law. The federal supplemental  
8 jurisdiction statute provides that "'district courts shall have  
9 supplemental jurisdiction over all other claims that are so related  
10 to claims in the action within such original jurisdiction that they  
11 form part of the same case or controversy under Article III of the  
12 United States Constitution.'" 28 U.S.C. § 1367(a).

13 Plaintiff asserts supplementary state law claims that the  
14 actions of Defendants were tortious. Liberally construed,  
15 Plaintiff's allegations satisfy the statutory requirement.  
16 Accordingly, the Court will exercise supplemental jurisdiction over  
17 Plaintiff's state law claims.

18 III. Service

19 Because Plaintiff is not proceeding in forma pauperis in this  
20 action, he may not rely on the United States Marshal for service of  
21 the summons and amended complaint without paying for this service.  
22 See Fed. R. Civ. P. 4(c)(3). Consequently, Plaintiff is  
23 responsible for serving all Defendants against whom cognizable  
24 claims for relief have been found. Plaintiff has not filed a proof  
25 of service showing that any defendant has been served with the  
26 summons and amended complaint in accordance with the Federal Rules  
27 of Civil Procedure. Specifically, Rule 4(m) of the Federal Rules  
28 of Civil Procedure provides:

1 If service and summons of a complaint is not made upon a  
2 defendant within 120 days after the filing of the  
3 complaint, the court, upon motion or on its own  
4 initiative after notice to the plaintiff, shall dismiss  
5 the action without prejudice as to that defendant or  
6 direct that service be effected within a specified time;  
7 provided that if the plaintiff shows good cause for the  
8 failure, the court shall extend the time for service for  
9 an appropriate period.

6 Fed. R. Civ. P. 4(m).

7 The Court GRANTS Plaintiff sixty (60) days from the date of  
8 this Order to serve Defendants pursuant to the instructions below,  
9 and to file proof of service.

10 Title 28 U.S.C. § 1921(a)(A) provides that the United States  
11 Marshal shall routinely collect, and the Court may tax as costs,  
12 fees for serving a summons and complaint. Title 28 C.F.R.  
13 § 0.114(a)(3) provides that the United States Marshal shall collect  
14 a fee for personal service of a summons and complaint at the rate  
15 of \$55.00 per hour, or portion thereof, plus travel expenses.  
16 Plaintiff may himself arrange for service of all Defendants against  
17 whom cognizable claims for relief have been found or he may request  
18 the Court to order the Marshal to do so. If Plaintiff wishes the  
19 Marshal to serve the summons and amended complaint, he must inform  
20 the Court of this within twenty (20) days of the date of this Order  
21 and he must arrange to pay the required fee.

22 Alternatively, Plaintiff may accomplish service of Defendants  
23 pursuant to Federal Rule of Civil Procedure 4(d) which provides  
24 that plaintiffs may send to the defendants a notice that they are  
25 being sued and a request that they waive service of a summons. The  
26 notice must be in writing, addressed to the individual defendants,  
27 name the court where the amended complaint was filed, be  
28 accompanied by a copy of the amended complaint, two copies of the

1 waiver form, and a prepaid means for returning the form, be sent by  
2 first class mail or other reliable means, state the date the  
3 request was sent and give the defendant a reasonable time, at least  
4 thirty days after the request was sent, to return the waiver. See  
5 Fed. R. Civ. P. 4(d)(1)(A)-(G). The Clerk shall mail to Plaintiff  
6 sufficient copies of the Court's official "Waiver of Service of  
7 Summons" forms.

8       If Plaintiff requests that Defendants waive service,  
9 Defendants are cautioned that Rule 4(d) requires them to cooperate  
10 in saving unnecessary costs of service of the summons and amended  
11 complaint. Pursuant to Rule 4(d)(2), if Defendants, after being  
12 notified of this action and requested by Plaintiff to waive service  
13 of the summons, fail to do so, they will be required to bear the  
14 cost of such service unless good cause be shown for their failure  
15 to sign and return the waiver form. If service is waived, this  
16 action will proceed as if Defendants had been served on the date  
17 that the waiver is filed, except that pursuant to Rule  
18 12(a)(1)(A)(ii), Defendants will not be required to serve and file  
19 an answer before sixty (60) days from the date on which the request  
20 for waiver was sent. (This allows a longer time to respond than  
21 would be required if formal service of summons is necessary.)  
22 Defendants are asked to read the statement set forth at the foot of  
23 the waiver form that more completely describes the duties of the  
24 parties with regard to waiver of service of the summons. If  
25 service is waived after the date provided in the Notice but before  
26 Defendants have been personally served, the answer shall be due  
27 sixty (60) days from the date on which the request for waiver was  
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1 sent or twenty (20) days from the date the waiver form is filed,  
2 whichever is later.

3 IV. Motion for Appointment of Counsel

4 Plaintiff has filed a motion for appointment of counsel to  
5 represent him in this action.

6 There is no constitutional right to counsel in a civil case  
7 unless an indigent litigant may lose his physical liberty if he  
8 loses the litigation. See Lassiter v. Dep't of Soc. Servs., 452  
9 U.S. 18, 25 (1981); Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir.  
10 1997) (no constitutional right to counsel in § 1983 action),  
11 withdrawn in part on other grounds on reh'g en banc, 154 F.3d 952  
12 (9th Cir. 1998) (en banc). The court may ask counsel to represent  
13 an indigent litigant under 28 U.S.C. § 1915 only in "exceptional  
14 circumstances," the determination of which requires an evaluation  
15 of both (1) the likelihood of success on the merits, and (2) the  
16 ability of the plaintiff to articulate his claims pro se in light  
17 of the complexity of the legal issues involved. See id. at 1525;  
18 Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wilborn v.  
19 Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). Both of these  
20 factors must be viewed together before reaching a decision on a  
21 request for counsel under § 1915. See id.

22 The Court is unable to assess at this time whether exceptional  
23 circumstances exist which would warrant seeking volunteer counsel  
24 to accept a pro bono appointment. The proceedings are at an early  
25 stage and it is premature for the Court to determine Plaintiff's  
26 likelihood of success on the merits. Accordingly, the request for  
27 appointment of counsel at this time is DENIED. The Court will  
28 consider appointment of counsel later in the proceedings, after

1 Defendants have filed their dispositive motion and the Court has a  
2 better understanding of the procedural and substantive matters at  
3 issue. Therefore, Plaintiff may file a renewed motion for the  
4 appointment of counsel after Defendants' dispositive motion has  
5 been filed. If the Court decides that appointment of counsel is  
6 warranted at that time, it will seek volunteer counsel to agree to  
7 represent Plaintiff pro bono.

8 CONCLUSION

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

10 1. Plaintiff states a cognizable Eighth Amendment claims for  
11 the use of excessive force and for deliberate indifference to his  
12 basic human needs against Defendants Weningham. Plaintiff's Eighth  
13 Amendment claims against Defendant Cleary are DISMISSED WITH LEAVE  
14 TO AMEND as indicated above.

15 2. Plaintiff states a cognizable claim for deliberate  
16 indifference to his serious medical needs against Defendants Sayre,  
17 McLean, Risenhoover and Flowers.

18 3. Plaintiff's retaliation claim against Defendant Weningham  
19 based on retaliatory placement in the CSW cell is DISMISSED WITH  
20 LEAVE TO AMEND as indicated above.

21 4. Plaintiff's supervisory liability claim against  
22 Defendants Jacques, Johnson and Graves is DISMISSED WITH LEAVE TO  
23 AMEND as indicated above.

24 5. Within thirty (30) days of the date of this Order  
25 Plaintiff may file amended Eighth Amendment, retaliation and  
26 supervisory liability claims (Plaintiff shall resubmit only those  
27 claims and not the entire complaint) as set forth above in Sections  
28 II(A), (B)(1), (C) and (D) of this Order. He must clearly label

1 the document an "Amendment to the Complaint," and write in the case  
2 number for this action. The failure to do so within the thirty-day  
3 deadline will result in the dismissal of Plaintiff's Eighth  
4 Amendment claims against Defendant Cleary, his retaliation claim  
5 against Defendant Weningham, and his supervisory liability claim  
6 against Defendants Jacques, Johnson and Graves.

7 6. The claims against Doe Defendants One through Twenty-Five  
8 are DISMISSED WITHOUT PREJUDICE.

9 7. Within sixty (60) days of the date this Order is filed  
10 Plaintiff shall provide the Court with proof of service of the  
11 summons and amended complaint upon all Defendants against whom  
12 cognizable claims for relief have been found.

13 As mentioned above, Plaintiff may himself arrange for service  
14 of all Defendants against whom cognizable claims for relief have  
15 been found or he may request the Court to order the Marshal to do  
16 so. If Plaintiff wishes the Marshal to serve the summons and  
17 amended complaint, he must inform the Court of this within twenty  
18 (20) days of the date of this Order and he must arrange to pay the  
19 required fee. If Plaintiff chooses to request that Defendants  
20 waive service of summons, he must inform the Court that he has done  
21 so within twenty (20) days of the date of this Order.

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

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

5           10. Plaintiff's request for appointment of counsel (docket  
6 no. 6) is DENIED.

7           11. This Order terminates Docket no. 6.

8           12. The Court orders the Clerk of the Court to send this  
9 Order to PBSP Litigation Coordinator Harlan Watkins and to the  
10 California Attorney General and to mail courtesy copies to each  
11 Defendant so that Defendants have prior notice of this lawsuit and  
12 of the consequences if they fail to waive formal service and  
13 require service by the United States Marshal.

14  
15           IT IS SO ORDERED.

16 DATED:       June 1, 2010

*Claudia Wilken*

\_\_\_\_\_  
CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

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

4 DUKE BOLTER,

5 Plaintiff,

6 v.

7 FRANCISCO JACQUES et al,

8 Defendant.

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Case Number: CV09-04587 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 June 1, 2010, 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 Duke Bolter E-13662  
16 D-2 #122  
17 Pelican Bay State Prison  
18 P.O. Box 7500  
19 Crescent City, CA 95532

20 Dated: June 1, 2010

21 Richard W. Wieking, Clerk  
22 By: Ronnie Hersler, Adm Law Clerk  
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United States District Court  
For the Northern District of California