

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

3 ERIC L. GONZALEZ,

No. C 10-03732 CW (PR)

4                                    Plaintiff,

5                                    v.

ORDER SERVING AMENDED  
COMPLAINT

6 DR. J. CHUDY, CHIEF MEDICAL  
7 OFFICER, et al.,

8                                    Defendants.  
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10                    Plaintiff, a state prisoner incarcerated at the Correctional  
11 Training Facility - Soledad (CTF), filed this pro se civil rights  
12 action pursuant to 42 U.S.C. § 1983, alleging that medical  
13 providers at CTF were deliberately indifferent to his serious  
14 medical needs in violation of his Eighth Amendment right to be free  
15 from cruel and unusual punishment. Plaintiff's motion for leave to  
16 proceed in forma pauperis has been granted.

17                    On September 9, 2011, the Court conducted a preliminary  
18 screening of the complaint and determined that Plaintiff had failed  
19 to state a claim for relief under the Eighth Amendment against  
20 Defendants CTF Chief Medical Officer J. Chudy and CTF Registered  
21 Nurses Leary and Uy. The Court, therefore, dismissed the complaint  
22 with leave to amend for Plaintiff to allege facts showing that the  
23 Defendants acted with deliberate indifference to his serious  
24 medical needs.

25                    Now pending before the Court is Plaintiff's amended complaint.  
26 Therein, he names as Defendants CTF Chief Medical Officers Dr. J.  
27 Chudy, Dr. Sepulveda and Dr. Bright. Plaintiff has not realleged  
28 his claims against CTF Registered Nurses Leary and Uy.



1 Defendants will not be required to serve and file an answer before  
2 sixty (60) days from the date on which the request for waiver was  
3 sent. (This allows a longer time to respond than would be required  
4 if formal service of summons is necessary.) Defendants are asked  
5 to read the statement set forth at the foot of the waiver form that  
6 more completely describes the duties of the parties with regard to  
7 waiver of service of the summons. If service is waived after the  
8 date provided in the Notice but before Defendants have been  
9 personally served, the Answer shall be due sixty (60) days from the  
10 date on which the request for waiver was sent or twenty (20) days  
11 from the date the waiver form is filed, whichever is later.

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

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

24 b. Plaintiff's opposition to the dispositive motion  
25 shall be filed with the Court and served on Defendants no later  
26 than sixty (60) days after the date on which Defendants' motion is  
27 filed.

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1 The Ninth Circuit has held that the following notice should be  
2 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  
28 the incident, and copies of documents authenticated by sworn

1 declaration. Plaintiff will not be able to avoid summary judgment  
2 simply by repeating the allegations of his complaint.

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

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

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

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

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

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

23 IT IS SO ORDERED.

24 DATED: 1/6/2012

  
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CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

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