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

MICHAEL ALAN YOCOM,

No. C 11-5741 SBA (PR)

Plaintiff,

**ORDER SERVING COGNIZABLE  
CLAIMS; AND ADDRESSING  
PLAINTIFF'S PENDING MOTIONS**

v.

WARDEN RANDY GROUNDS, et al.,

(Docket nos. 5, 7)

Defendants.

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**INTRODUCTION**

Plaintiff, a state prisoner currently incarcerated at the Correctional Training Facility (CTF), has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983. He alleges that Defendants violated his constitutional rights while he was housed at CTF on August 31, 2011, and thereafter until he signed the complaint. Plaintiff has filed a motion for appointment of counsel (docket no. 5) and a motion for leave to amend the complaint (docket no. 7), which will both be addressed below. He has also filed a motion for leave to proceed in forma pauperis (docket no. 9), which will be granted in a separate written Order.

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

In his complaint, Plaintiff names the following Defendants, who are all prison officials at CTF: Warden Randy Grounds; Chief Disciplinary Officer J. A. Soars; Senior Hearing Officer J. M. Biggs; Correctional Counselor Diaz; Facility Captains P. A. Santiago and Lomeli; Correctional Sergeant Ramos; Correctional Officers Cordoba and Fick; Chief of Inmate Appeals D. Foston; Institutional Appeals Coordinators S. Lacey and P. Mullen; Chief Medical Officer M. Sepulveda; Chief Surgeon Bright; Physicians Rosana Lim Javate and J. Chudy; Physician Assistant Trent; and "1-50 John or Jane Does custody defendants." (Compl. at 2-3, Attach. to Compl. at 7.)

The Court now reviews the allegations in the complaint and addresses Plaintiff's pending motions below.

**DISCUSSION**

**I. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. Id. § 1915A(b)(1), (2). Pro se pleadings must be liberally construed. Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:

- (1) that a right secured by the Constitution or laws of the United States was violated, and
- (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

**II. Legal Claims**

**A. Retaliation Claims**

Retaliation by a state actor for the exercise of a constitutional right is actionable under 42 U.S.C. § 1983, even if the act, when taken for different reasons, would have been proper. See Mt. Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 283-84 (1977). Retaliation, though it is not expressly referred to in the Constitution, is actionable because retaliatory actions may tend to chill individuals' exercise of constitutional rights. See Perry v. Sindermann, 408 U.S. 593, 597 (1972).

"Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote omitted). Accord Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995) (prisoner suing prison officials under § 1983 for retaliation must allege that he was retaliated against for exercising his constitutional rights and that the retaliatory action did not advance legitimate penological goals, such as preserving institutional

1 order and discipline); Barnett v. Centoni, 31 F.3d 813, 816 (9th Cir. 1994) (per curiam) (same);  
2 Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985) (contention that actions "arbitrary and  
3 capricious" sufficient to allege retaliation).

4 Plaintiff alleges that on August 31, 2011, he was transported back to CTF from a settlement  
5 conference hearing held at Solano State Prison, regarding another case he was litigating against CTF  
6 at the time. Upon his return Plaintiff claims that Defendants subjected him to a series of retaliatory  
7 acts depriving him of his First Amendment right to redress.

8 First, Plaintiff alleges that Defendants Javate and Chudy "refuse[d] to treat severe (acute and  
9 chronic) pain complaints with necessary narcotics . . . [as] a direct retaliation for and punishment for  
10 litigations against Dr[.] Javate and the prison officials . . . ." (Attach. to Compl. at 13.) Plaintiff  
11 then claims that Defendants Lomeli, Diaz, Ramos, Cordoba, and Fick subjected him to unnecessary  
12 physical abuse and disciplinary measures including "shov[ing] him in the cell injuring his neck and  
13 back on (8-31-11)," (id.), and "imposing/inflicting severe punishments of hard c-status with fully  
14 suspended privileges" (id. at 11). Plaintiff further claims that Defendants Sepulveda, Bright, and  
15 Trent wrongfully stripped him of his "long standing housing restrictions and accommodations" as a  
16 retaliatory act. (Id. at 16.) Plaintiff also alleges that Defendants Foston, Lacey, and Mullen  
17 prevented his proper use of the prison's grievance system, denying him due process (as explained  
18 below) and chilling his First Amendment rights. (Id. at 12.) Finally, Plaintiff raises similar  
19 allegations of due process violations and retaliation by Defendants Grounds, Santiago, Soars, and  
20 Biggs because of their involvement in reviewing his grievances, approving punishments imposed  
21 against him, as well as ignoring relevant information that should have been used in assessing his  
22 conduct. (Id. at 14.)

23 Liberally construed, Plaintiff's allegations satisfy the pleading requirements for a First  
24 Amendment retaliation claim against all the aforementioned Defendants.

25 **B. Claims Relating to Grievance System**

26 Interests protected by the Due Process Clause may arise from two sources -- the Due Process  
27 Clause itself and laws of the States. See Meachum v. Fano, 427 U.S. 215, 223-27 (1976). There is  
28 no constitutional right to a prison administrative appeal or grievance system. Ramirez v. Galaza,

1 334 F.3d 850, 860 (9th Cir. 2003).

2           However, Title 15 of the California Code of Regulations, section 3084, et seq. grants state  
3 prisoners the right to a prison appeals process. The regulations are purely procedural -- they require  
4 the establishment of a procedural structure for reviewing prisoner complaints and set forth no  
5 substantive standards. Instead, they provide for flexible appeal time limits, see Cal. Code Regs. tit.  
6 15, § 3084.6, and, at most, that "no reprisal shall be taken against an inmate or parolee for filing an  
7 appeal," id. § 3084.1(d). A provision that merely sets procedural requirements, even if mandatory,  
8 cannot form the basis of a constitutionally cognizable liberty interest. Smith v. Noonan, 992 F.2d  
9 987, 989 (9th Cir. 1993); see, e.g., Antonelli v. Sheahan, 81 F.3d 1422, 1430 (7th Cir. 1996) (prison  
10 grievance procedure is procedural right that does not give rise to protected liberty interest requiring  
11 procedural protections of Due Process Clause); Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir.  
12 1993) (same); Azeez v. DeRobertis, 568 F. Supp. 8, 10 (N.D. Ill. 1982) (same). Accordingly, a  
13 prison official's failure to process grievances, without more, is not actionable under § 1983. See  
14 Buckley, 997 F.2d at 495; see also Ramirez, 334 F.3d at 860 (prisoner's claimed loss of liberty  
15 interest in processing of his appeals does not violate due process because prisoners lack a separate  
16 constitutional entitlement to a specific prison grievance system).

17           Although there is a First Amendment right to petition government for redress of grievances,  
18 there is no right to a response or any particular action. See Flick v. Alba, 932 F.2d 728 (8th Cir.  
19 1991) (prisoner's right to petition the government for redress "is not compromised by the prison's  
20 refusal to entertain his grievance").

21           Here, Plaintiff alleges that he was conspired against by Defendants Foston, Lacey, and  
22 Mullen, who prevented him from using the prison's grievance process to its full extent. (Attach. to  
23 Compl. at 12.) Plaintiff also claims that Defendants Grounds, Santiago, Soars, and Biggs  
24 fraudulently conducted review of his grievances and that they improperly and unethically handled  
25 his claims. (Id. at 13-14.)

26           Therefore, liberally construing the complaint, the Court finds that Plaintiff has stated a  
27 cognizable due process claim relating to the prison grievance system against the aforementioned  
28 Defendants.

1           **C.     Disability Discrimination Claim**

2           Plaintiff alleges that he suffered discrimination on the basis of disability.

3                   **1.     Cause of Action**

4           Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq., and  
5 § 504 of the Rehabilitation Act of 1973, as amended and codified in 29 U.S.C. § 794(a), prohibit  
6 discrimination on the basis of disability in the programs, services or activities of a public entity.

7           The elements of a cause of action under Title II of the ADA are: (1) that the plaintiff is a qualified  
8 individual with a disability; (2) that the plaintiff was either excluded from participation in or denied  
9 the benefits of a service, program, or activity of a public entity, or was otherwise discriminated  
10 against by the public entity; and (3) that such exclusion, denial of benefits, or discrimination was by  
11 reason of disability. Duvall v. County of Kitsap, 260 F.3d 1124, 1135 (9th 2001); 42 U.S.C.  
12 § 12132. A cause of action under § 504 of the Rehabilitation Act essentially parallels an ADA  
13 cause of action. See Olmstead v. Zimring, 119 S. Ct. 2176, 2182 (1999); Duvall, 260 F.3d at 1135.

14  
15           A qualifying "disability" is "(A) a physical or mental impairment that substantially limits  
16 one or more of the major life activities of such individual; (B) a record of such an impairment; or  
17 (C) being regarded as having such an impairment." 42 U.S.C. § 12102(2).

18           Federal regulations require a public entity to "make reasonable modifications in policies,  
19 practices, or procedures when the modifications are necessary to avoid discrimination on the basis  
20 of disability, unless the public entity can demonstrate that making the modifications would  
21 fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7).

22                   **2.     Proper Defendants**

23           Plaintiff alleges that Defendants Sepulveda, Bright, and Trent denied him of the benefits  
24 granted to him under the ADA by stripping away his disability status. (Attach. to Compl. at 15-17.)

25           Plaintiff cannot bring an ADA or § 504 action against individual officers, because the proper  
26 defendant in such actions is the public entity responsible for the alleged discrimination. Nor can he  
27 bring a § 1983 action against Defendants based on allegedly discriminatory conduct. See Vinson v.  
28 Thomas, 288 F.3d 1145, 1156 (9th Cir. 2002) ("[A] plaintiff cannot bring an action under 42 U.S.C.

1 § 1983 against a State official in her individual capacity to vindicate rights created by Title II of the  
2 ADA or section 504 of the Rehabilitation Act."). Therefore, Plaintiff's disability discrimination  
3 claims against Defendants are DISMISSED with prejudice.

4 The proper defendants to Plaintiff's disability discrimination claims are the public entities  
5 that allegedly denied him equal access to their programs: CTF and the California Department of  
6 Corrections and Rehabilitation (CDCR). State correctional facilities are "public entities" within the  
7 meaning of the ADA. See 42 U.S.C. § 12131(1)(A) & (B); Pennsylvania Dep't of Corrections v.  
8 Yeskey, 524 U.S. 206, 210 (1998); Armstrong v. Wilson, 124 F.3d 1019, 1025 (9th Cir. 1997).  
9 State prisons that receive federal financial assistance are covered by the Rehabilitation Act. See  
10 Armstrong, 124 F.3d at 1022-23; see also Clark v. California, 123 F.3d 1267, 1271 (9th Cir. 1997)  
11 (noting that the California prison system then accepted federal funds and thus was covered by the  
12 Rehabilitation Act).

13 As state agencies, these entities are shielded from suit in federal court unless they waive  
14 their sovereign immunity or Congress has validly abrogated their sovereign immunity in the  
15 applicable statute. See Kentucky v. Graham, 473 U.S. 159, 167 n.14 (1985). In Board of Trustees  
16 of the Univ. of Ala. v. Garrett, 121 S. Ct. 955 (2001), the Supreme Court held that Congress did not  
17 have the power to abrogate the States' Eleventh Amendment immunity under Title I of the ADA, but  
18 declined to reach the question whether Congress validly abrogated the States' immunity as to  
19 Title II. See Garrett, 121 S. Ct. at 960 n.1. The Court specifically noted that Title II has somewhat  
20 different remedial provisions from Title I. Id. For purposes of initial review, the Court will assume  
21 that the California prisons do not enjoy Eleventh Amendment immunity with respect to Plaintiff's  
22 ADA claims.

23 As to the Rehabilitation Act, the Ninth Circuit has held that, "[b]ecause California accepts  
24 federal funds under the Rehabilitation Act, California has waived any immunity under the Eleventh  
25 Amendment" as to that Act's anti-discrimination provisions. See Clark, 123 F.3d at 1271; see also  
26 Douglas v. California Dept. Youth Authority, 271 F.3d 812, 819 (9th Cir.), amended, 271 F.3d 910  
27 (9th Cir. 2001) (adhering to Clark after Supreme Court's decision in Garrett.) Thus, Plaintiff may  
28 only pursue claims for both money damages and prospective injunctive relief under the

1 Rehabilitation Act directly against the CTF and the CDCR.

2 In sum, assuming Plaintiff has a valid disability discrimination claim, he may assert the  
3 claim in an amendment to the complaint against CTF and the CDCR, but not against any individual  
4 defendants.

5 **3. Analysis of Claim**

6 Plaintiff merely alleges that the aforementioned Defendants denied him certain benefits  
7 granted to him under the ADA by stripping him of his disability status; however, as mentioned  
8 above, he does not elaborate on what his disability is. (Attach. to Compl. at 15-17.) Therefore,  
9 these allegations do not establish that he is an individual with a disability under the federal statutes.

10 In addition, Plaintiff has not alleged discriminatory conduct. He alleges that the  
11 aforementioned Defendants denied him certain benefits, but he does not allege that they did so  
12 because he was disabled. He does not allege that he was treated differently than similarly-situated  
13 nondisabled inmates and he does not allege that he was excluded from participation in a prison  
14 program or service because of his disability. Therefore, while Plaintiff could have valid claims  
15 under the Eighth Amendment (as explained below), he does not appear to have a cognizable  
16 disability discrimination claim.

17 Plaintiff's ADA and Section 504 claims, therefore, are DISMISSED with leave to amend.  
18 Plaintiff may reassert the claims in an amendment to the complaint if he can in good faith allege that  
19 he is an individual with a disability under the federal statutes, that the prison discriminated against  
20 him on the basis of his "disability," and if he names the proper Defendants.

21 **D. Deliberate Indifference to Serious Medical Needs**

22 Deliberate indifference to serious medical needs violates the Eighth Amendment's  
23 proscription against cruel and unusual punishment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976);  
24 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, WMX  
25 Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc); Jones v. Johnson, 781  
26 F.2d 769, 771 (9th Cir. 1986). A determination of "deliberate indifference" involves an examination  
27 of two elements: the seriousness of the prisoner's medical need and the nature of the defendant's  
28 response to that need. See McGuckin, 974 F.2d at 1059. A "serious" medical need exists if the

1 failure to treat a prisoner's condition could result in further significant injury or the "unnecessary  
2 and wanton infliction of pain." Id. (citing Estelle, 429 U.S. at 104). A prison official is deliberately  
3 indifferent if he or she knows that a prisoner faces a substantial risk of serious harm and disregards  
4 that risk by failing to take reasonable steps to abate it. Farmer v. Brennan, 511 U.S. 825, 837  
5 (1994).

6 Plaintiff claims that after he was diagnosed as suicidal and committed to "Suicide  
7 Prevention & Response' hospitalization" in the on-site prison hospital, he was punished by  
8 Defendants Ramos, Cordoba, and Fick for the acts that resulted from his suicidal state of mind.  
9 (Attach. to Compl. at 9.) Plaintiff's history of mental illness and his hospitalization show a serious  
10 medical need. These Defendants' indifferent treatment of Plaintiff and their alleged failure to follow  
11 protocol in considering his mental health in disciplinary proceedings, (id. at 18), exacerbated his  
12 mental illness thereby causing him to fear himself and to be hospitalized as well as placed under  
13 "suicide watch" (id. at 11). Plaintiff also alleges that he suffers from other serious medical needs,  
14 including his "chronic [and] severe" neck pain, and he claims that Defendants Javate and Chudy  
15 were deliberately indifferent in their refusal to offer him treatment for this pain. (Id. at 18.)  
16 Liberally construed, Plaintiff's allegations of Defendants' refusal to treat him for his mental  
17 problems and neck pain state a cognizable claim for deliberate indifference to his serious medical  
18 needs.

19 **E. Violations of the Plata and Coleman Class Action Settlement Agreements**

20 The United States Supreme Court upheld the decision of a three-judge Ninth Circuit in Plata  
21 v. Schwarzenegger, Case No. 3:01-CV-01351-TEH (N.D. Cal. ), aff'd in part, 603 F.3d 1088 (9th  
22 Cir. 2010), that identified overcrowding as the primary cause of the inadequacies in the mental and  
23 medical health care in prison and issued a remedial order requiring California to reduce the prison  
24 population to 137.5% of the prisons' design capacity within two years. See Brown v. Plata, 131 S.  
25 Ct. 1910, 1922-28 (2011). Meanwhile, Coleman v. Wilson, 912 F. Supp. 1282 (E.D. Cal. 1995),  
26 which involved a class of prisoner-plaintiffs with serious mental disorders, has been consolidated  
27 with the aforementioned Plata case. Plaintiff claims that Defendants violated the federal class action  
28 lawsuit agreements in Plata and Coleman based on their actions of retaliation and deliberate



1 indifference to his serious medical needs. However, a remedial court order, standing alone, cannot  
2 serve as the basis for liability under 42 U.S.C. § 1983 because such orders do not create "rights,  
3 privileges or immunities secured by the Constitution and laws" of the United States. Green v.  
4 McKaskle, 788 F.2d 1116, 1123-24 (5th Cir. 1986). Therefore, these claims are DISMISSED for  
5 failure to state a claim. See id. (remedial decrees are means by which unconstitutional conditions  
6 are corrected but do not create or enlarge constitutional rights).

7 **F. Claims Against Doe Defendants**

8 Plaintiff identifies "1-50 John or Jane Does custody defendants" whose names he intends to  
9 learn through discovery. The use of Doe defendants is not favored in the Ninth Circuit. See  
10 Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). However, where the identity of alleged  
11 defendants cannot be known prior to the filing of a complaint the plaintiff should be given an  
12 opportunity through discovery to identify them. Id. Failure to afford the plaintiff such an  
13 opportunity is error. See Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999).  
14 Accordingly, the claims against these Doe Defendants are DISMISSED from this action without  
15 prejudice. Should Plaintiff learn these Doe Defendants' identities through discovery, he may move  
16 to file an amended complaint to add them as named defendants. See Brass v. County of Los  
17 Angeles, 328 F.3d 1192, 1195-98 (9th Cir. 2003).

18 **III. Motion for Appointment of Counsel**

19 On February 15, 2012, Plaintiff filed a motion with the Court requesting appointment of  
20 counsel to represent him in this action. He claims that he cannot litigate this action on his own  
21 behalf because he is a layperson untrained in law and is an indigent person unable to pay for the  
22 service of counsel. (Docket. no. 5.)

23 The Court is unable to assess at this time whether exceptional circumstances exist which  
24 would warrant seeking volunteer counsel to accept a pro bono appointment. The proceedings are at  
25 an early stage and it is premature for the Court to determine Plaintiff's likelihood of success on the  
26 merits. Moreover, Plaintiff has been able to articulate his claims adequately pro se in light of the  
27 complexity of the issues involved. See Agyeman v. Corrections Corp. of America, 390 F.3d 1101,  
28 1103 (9th Cir. 2004). Accordingly, the request for appointment of counsel at this time is DENIED.

1 This does not mean, however, that the Court will not consider appointment of counsel at a later  
2 juncture in the proceedings, that is, after Defendants have filed their dispositive motion and the  
3 Court has a better understanding of the procedural and substantive matters at issue. Therefore,  
4 Plaintiff may file a renewed motion for the appointment of counsel after Defendants' dispositive  
5 motion has been filed. If the Court decides that appointment of counsel is warranted at that time,  
6 then it can seek volunteer counsel to agree to represent Plaintiff pro bono.

7 **IV. Motion for Leave to Amend the Complaint**

8 In the complaint, Plaintiff seeks \$1,000,000 in compensation, as well as unlimited punitive  
9 damages. (Compl. at 3-4.) However, in a motion for leave to amend the complaint filed on  
10 February 28, 2012, Plaintiff requests that his prayer for relief be amended to seek damages  
11 according to proof as well as attorney's fees. (Docket no. 7.) Therefore, the Court GRANTS the  
12 motion for leave to amend the complaint.

13 **CONCLUSION**

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

- 15 1. Plaintiff has stated a cognizable First Amendment retaliation claim against  
16 Defendants Grounds, Santiago, Soars, Biggs, Lomeli, Diaz, Ramos, Cordoba, Fick, Foston, Lacey,  
17 Mullen, Sepulveda, Bright, Trent, Javate, and Chudy.
- 18 2. Plaintiff has stated a cognizable due process claim relating to the prison grievance  
19 system against Defendants Grounds, Santiago, Soars, Biggs, Foston, Lacey, and Mullen.
- 20 3. Plaintiff's disability discrimination claim against Defendants Sepulveda, Bright, and  
21 Trent, who are individual prison officials, are DISMISSED WITH PREJUDICE. If Plaintiff names  
22 CTF and the CDCR as Defendants, then his ADA and Section 504 claims against these public  
23 entities are DISMISSED WITH LEAVE TO AMEND, as directed above. Within **twenty-eight (28)**  
24 **days** of the date of this Order, Plaintiff may file an amended disability discrimination claim as set  
25 forth above in Section II(C) of this Order. (Plaintiff shall resubmit only that claim and not the entire  
26 complaint.) The amended claim must be submitted on an amendment to the complaint. It must  
27 include the caption as well as the civil case number of this action (C 11-5741 SBA (PR)) and the  
28 words AMENDMENT TO THE COMPLAINT on the first page. The failure to do so will result in

1 the dismissal without prejudice of Plaintiff's disability discrimination claim.

2 4. Plaintiff has stated a cognizable claim for deliberate indifference to his serious  
3 medical needs against Defendants Ramos, Cordoba, Fick, Javate, and Chudy.

4 5. Plaintiff's claims of violations of the Plata and Coleman class action settlement  
5 agreements are DISMISSED for failure to state a claim.

6 6. Plaintiff's claims against the Doe Defendants are DISMISSED from this action  
7 without prejudice.

8 7. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of  
9 Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint and  
10 all attachments thereto (docket no. 1), and a copy of this Order to the following CTF Prison  
11 Officials: **Warden Randy Grounds; Chief Disciplinary Officer J. A. Soars; Senior Hearing**  
12 **Officer J. M. Biggs; Correctional Counselor Diaz; Facility Captains P. A. Santiago and**  
13 **Lomeli; Correctional Sergeant Ramos; Correctional Officers Cordoba and Fick; Chief of**  
14 **Inmate Appeals D. Foston; Institutional Appeals Coordinators S. Lacey and P. Mullen; Chief**  
15 **Medical Officer M. Sepulveda; Chief Surgeon Bright; Physicians Rosana Lim Javate and J.**  
16 **Chudy; and Physician Assistant Trent.** The Clerk of the Court shall also mail a copy of the  
17 complaint and a copy of this Order to the State Attorney General's Office in San Francisco.  
18 Additionally, the Clerk shall mail a copy of this Order to Plaintiff.

19 8. Defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure requires  
20 them to cooperate in saving unnecessary costs of service of the summons and complaint. Pursuant  
21 to Rule 4, if Defendants, after being notified of this action and asked by the Court, on behalf of  
22 Plaintiff, to waive service of the summons, fail to do so, they will be required to bear the cost of  
23 such service unless good cause be shown for their failure to sign and return the waiver form. If  
24 service is waived, this action will proceed as if Defendants had been served on the date that the  
25 waiver is filed, except that pursuant to Rule 12(a)(1)(B), Defendants will not be required to serve  
26 and file an answer before **sixty-three (63) days** from the date on which the request for waiver was  
27 sent. (This allows a longer time to respond than would be required if formal service of summons is  
28 necessary.) Defendants are asked to read the statement set forth at the foot of the waiver form that

1 more completely describes the duties of the parties with regard to waiver of service of the summons.  
2 If service is waived after the date provided in the Notice but before Defendants have been  
3 personally served, the Answer shall be due **sixty-three (63) days** from the date on which the request  
4 for waiver was sent or **twenty-one (21) days** from the date the waiver form is filed, whichever is  
5 later.

6 9. Defendants shall answer the complaint in accordance with the Federal Rules of Civil  
7 Procedure. The following briefing schedule shall govern dispositive motions in this action:

8 a. No later than **ninety-one (91) days** from the date their answer is due,  
9 Defendants shall file a motion for summary judgment or other dispositive motion. The motion shall  
10 be supported by adequate factual documentation and shall conform in all respects to Federal Rule of  
11 Civil Procedure 56. If Defendants are of the opinion that this case cannot be resolved by summary  
12 judgment, they shall so inform the Court prior to the date the summary judgment motion is due. All  
13 papers filed with the Court shall be promptly served on Plaintiff.

14 b. Plaintiff's opposition to the dispositive motion shall be filed with the Court  
15 and served on Defendants no later than **sixty-three (63) days** after the date on which Defendants'  
16 motion is filed. The Ninth Circuit has held that the following notice should be given to pro se  
17 plaintiffs facing a summary judgment motion:

18 The defendants have made a motion for summary judgment by which they  
19 seek 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.

20 Rule 56 tells you what you must do in order to oppose a motion for summary  
21 judgment. Generally, summary judgment must be granted when there is no genuine  
22 issue of material fact -- that is, if there is no real dispute about any fact that would  
23 affect the result of your case, the party who asked for summary judgment is entitled  
24 to judgment as a matter of law, which will end your case. When a party you are  
25 suing makes a motion for summary judgment that is properly supported by  
26 declarations (or other sworn testimony), you cannot simply rely on what your  
27 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 defendants], your case  
will be dismissed and there will be no trial.

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

Plaintiff is advised to read Rule 56 of the Federal Rules of Civil Procedure and Celotex

1 Corp. v. Catrett, 477 U.S. 317 (1986) (party opposing summary judgment must come forward with  
2 evidence showing triable issues of material fact on every essential element of his claim). Plaintiff is  
3 cautioned that because he bears the burden of proving his allegations in this case, he must be  
4 prepared to produce evidence in support of those allegations when he files his opposition to  
5 Defendants' dispositive motion. Such evidence may include sworn declarations from himself and  
6 other witnesses to the incident, and copies of documents authenticated by sworn declaration.  
7 Plaintiff will not be able to avoid summary judgment simply by repeating the allegations of his  
8 complaint.

9 c. Defendants shall file a reply brief no later than **twenty-eight (28) days** after  
10 the date Plaintiff's opposition is filed.

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

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

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

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

21 13. Extensions of time are not favored, though reasonable extensions will be granted.  
22 Any motion for an extension of time must be filed no later than **fourteen (14) days** prior to the  
23 deadline sought to be extended.

24 14. The Court DENIES Plaintiff's motion for appointment of counsel (docket no. 5).

25 15. The Court GRANTS Plaintiff's motion for leave to amend the complaint (docket no.  
26 7) to allow that his prayer for relief be amended to seek damages according to proof as well as  
27 attorney's fees.

28 16. This Order terminates Docket nos. 5 and 7.

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IT IS SO ORDERED.

DATED: 6/12/12

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ALAN YOCOM,

Plaintiff,

v.

WARDEN RANDY GROUNDS et al,

Defendant.

Case Number: CV11-05741 SBA

**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 14, 2012, 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.

Michael Alan Yocom K-22960  
CTF-Soledad State Prison  
Central Facility  
P.O. Box 689  
Soledad, CA 93960-0689

Dated: June 14, 2012

Richard W. Wieking, Clerk  
By: Lisa Clark, Deputy Clerk