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

DANIEL LEE THORNBERRY,  
Plaintiff,

No. C 12-6129 YGR (PR)

**ORDER OF SERVICE**

vs.

Z. AHMED, 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 Defendants were deliberately indifferent to his serious medical needs.

He also seeks leave to proceed *in forma pauperis*, which will be granted in a separate Order.

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

In his complaint, Plaintiff names the following Defendants: CTF Chief Executive Officer G. Ellis; CTF Physicians Z. Ahmed and Laurie Hedden; and "Director of California Correctional Health Care Services." Plaintiff seeks monetary damages.

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**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 Dep't*, 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 (1) that a right secured by the Constitution or laws of the United States was violated, and  
2 (2) that the alleged violation was committed by a person acting under the color of state law. *West v.*  
3 *Atkins*, 487 U.S. 42, 48 (1988).

4 **II. Legal Claims**

5 **A. Deliberate Indifference Claim**

6 Deliberate indifference to serious medical needs violates the Eighth Amendment's  
7 proscription against cruel and unusual punishment. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976);  
8 *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds*, *WMX*  
9 *Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc); *Jones v. Johnson*, 781  
10 F.2d 769, 771 (9th Cir. 1986). A determination of "deliberate indifference" involves an examination  
11 of two elements: the seriousness of the prisoner's medical need and the nature of the defendant's  
12 response to that need. *See McGuckin*, 974 F.2d at 1059. A "serious" medical need exists if the  
13 failure to treat a prisoner's condition could result in further significant injury or the "unnecessary  
14 and wanton infliction of pain." *Id.* (citing *Estelle v. Gamble*, 429 U.S. at 104). A prison official is  
15 deliberately indifferent if he or she knows that a prisoner faces a substantial risk of serious harm and  
16 disregards that risk by failing to take reasonable steps to abate it. *Farmer v. Brennan*, 511 U.S. 825,  
17 837 (1994).

18 Plaintiff's allegation that he suffers from "chronic lower back pain along with severe leg pain  
19 in left leg" supports an inference that he has serious medical needs. (Compl. at 3.) Liberally  
20 construed, Plaintiff's allegations that prison medical staff failed to provide adequate medical  
21 treatment for his condition -- while he was housed there in 2011 to 2012 -- state a cognizable  
22 deliberate indifference claim against Defendants Ellis, Ahmed, and Hedden. Accordingly, this  
23 claim may proceed against these Defendants.

24 **B. Supervisory Liability Claim**

25 Plaintiff sues Defendant "Director of California Correctional Health Care Services" in  
26 his/her supervisory capacity. Plaintiff does not allege facts demonstrating that this Defendant  
27 violated his federal rights, but seems to claim this Defendant is liable based on the conduct of  
28 his/her subordinates.



1 waiver is filed, except that pursuant to Rule 12(a)(1)(B), Defendants will not be required to serve  
2 and file an answer before **sixty-three (63) days** from the date on which the request for waiver was  
3 sent. (This allows a longer time to respond than would be required if formal service of summons is  
4 necessary.) Defendants are asked to read the statement set forth at the foot of the waiver form that  
5 more completely describes the duties of the parties with regard to waiver of service of the summons.  
6 If service is waived after the date provided in the Notice but before Defendants have been  
7 personally served, the Answer shall be due **sixty-three (63) days** from the date on which the request  
8 for waiver was sent or **twenty-one (21) days** from the date the waiver form is filed, whichever is  
9 later.

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

12 a. No later than **ninety-one (91) days** from the date their answer is due,  
13 Defendants shall file a motion for summary judgment or other dispositive motion. The motion must  
14 be supported by adequate factual documentation, must conform in all respects to Federal Rule of  
15 Civil Procedure 56, and must include as exhibits all records and incident reports stemming from the  
16 events at issue. A motion for summary judgment also must be accompanied by a *Rand*<sup>1</sup> notice so  
17 that Plaintiff will have fair, timely and adequate notice of what is required of him in order to oppose  
18 the motion. *Woods v. Carey*, 684 F.3d 934, 935 (9th Cir. 2012) (notice requirement set out in *Rand*  
19 must be served concurrently with motion for summary judgment). A motion to dismiss for failure to  
20 exhaust available administrative remedies must be accompanied by a similar notice. *Stratton v.*  
21 *Buck*, 697 F.3d 1004, 1008 (9th Cir. 2012); *Woods*, 684 F.3d at 935 (notice requirement set out in  
22 *Wyatt v. Terhune*, 315 F.3d 1108 (9th Cir. 2003), must be served concurrently with motion to  
23 dismiss for failure to exhaust available administrative remedies).

24 If Defendants are of the opinion that this case cannot be resolved by summary judgment,  
25 they shall so inform the Court prior to the date the summary judgment motion is due. All papers  
26 filed with the Court shall be promptly served on Plaintiff.

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<sup>1</sup> *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998).

1           b.       Plaintiff's opposition to the dispositive motion shall be filed with the Court  
2 and served on Defendants no later than **sixty-three (63) days** after the date on which Defendants'  
3 motion is filed.

4           c.       Plaintiff is advised that a motion for summary judgment under Rule 56 of the  
5 Federal Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you must do  
6 in order to oppose a motion for summary judgment. Generally, summary judgment must be granted  
7 when there is no genuine issue of material fact -- that is, if there is no real dispute about any fact that  
8 would affect the result of your case, the party who asked for summary judgment is entitled to  
9 judgment as a matter of law, which will end your case. When a party you are suing makes a motion  
10 for summary judgment that is properly supported by declarations (or other sworn testimony), you  
11 cannot simply rely on what your complaint says. Instead, you must set out specific facts in  
12 declarations, depositions, answers to interrogatories, or authenticated documents, as provided in  
13 Rule 56(e), that contradicts the facts shown in the defendant's declarations and documents and show  
14 that there is a genuine issue of material fact for trial. If you do not submit your own evidence in  
15 opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is  
16 granted, your case will be dismissed and there will be no trial. *Rand*, 154 F.3d at 962-63.

17           Plaintiff also is advised that a motion to dismiss for failure to exhaust available  
18 administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your case, albeit without  
19 prejudice. You must "develop a record" and present it in your opposition in order to dispute any  
20 "factual record" presented by the defendants in their motion to dismiss. *Wyatt*, 315 F.3d at 1120  
21 n.14. You have the right to present any evidence to show that you did exhaust your available  
22 administrative remedies before coming to federal court. Such evidence may include:  
23 (1) declarations, which are statements signed under penalty of perjury by you or others who have  
24 personal knowledge of relevant matters; (2) authenticated documents -- documents accompanied by  
25 a declaration showing where they came from and why they are authentic, or other sworn papers such  
26 as answers to interrogatories or depositions; (3) statements in your complaint insofar as they were  
27 made under penalty of perjury and they show that you have personal knowledge of the matters state  
28 therein. In considering a motion to dismiss for failure to exhaust, the court can decide disputed

1 issues of fact with regard to this portion of the case. *Stratton*, 697 F.3d at 1008-09.

2 (The *Rand* and *Wyatt/Stratton* notices above do not excuse Defendants' obligation to serve  
3 said notices again concurrently with motions to dismiss for failure to exhaust available  
4 administrative remedies and motions for summary judgment. *Woods*, 684 F.3d at 935.)

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

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

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

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

15 8. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court  
16 informed of any change of address and must comply with the Court's orders in a timely fashion.  
17 Pursuant to Northern District Local Rule 3-11 a party proceeding *pro se* whose address changes  
18 while an action is pending must promptly file a notice of change of address specifying the new  
19 address. *See* L.R. 3-11(a). The Court may dismiss without prejudice a complaint when: (1) mail  
20 directed to the *pro se* party by the Court has been returned to the Court as not deliverable, and  
21 (2) the Court fails to receive within sixty days of this return a written communication from the *pro*  
22 *se* party indicating a current address. *See* L.R. 3-11(b).

23 9. Extensions of time are not favored, though reasonable extensions will be granted.  
24 Any motion for an extension of time must be filed no later than **fourteen (14) days** prior to the  
25 deadline sought to be extended. IT IS SO ORDERED.

26 DATED: February 15, 2013

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28 YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE