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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TRAVIS SKYLER OWEN FRANKLIN,

Plaintiff,

v.

DIEGO LOPEZ DE CASTILLA, MD,
MPH,

CASE NO. C17-594-JLR-BAT

**ORDER DIRECTING SERVICE
AND PROCEDURES**

This is a civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff is proceeding with this action *pro se* and *in forma pauperis*. Plaintiff is currently incarcerated at the Clallam Bay Corrections Center (CBCC) and is subject to Mandatory Electronic E-Filing pursuant to General Orders 02-15 and 06-16. The Court, having reviewed plaintiff’s amended complaint, hereby **ORDERS** as follows:

(1) Service by Clerk

The Clerk is directed to send the following to defendant Diego Lopez de Castilla, MD, MPH and the Washington State Department of Corrections by e-mail: a copy of plaintiff’s amended complaint (Dkt. 6) and of this Order, two copies of the Notice of Lawsuit and Request for Waiver of Service of Summons, and a Waiver of Service of Summons.

(2) Response Required

1 Defendants shall have **30 days** within which to return the enclosed waiver of service of
2 summons. Any defendant who timely returns the signed waiver shall have **60 days** after the date
3 designated on the notice of lawsuit to file and serve an answer to the complaint or a motion
4 permitted under Rule 12 of the Federal Rules of Civil Procedure.

5 Any defendant who fails to timely return the signed waiver will be personally served with
6 a summons and complaint, and may be required to pay the full costs of such service, pursuant to
7 Rule 4(d)(2). A defendant who has been personally served shall file an answer or motion
8 permitted under Rule 12 within **30 days** after service.

9 (3) Filing and Service by Parties Generally

10 All attorneys admitted to practice before this Court are required to file documents
11 electronically via the Court's CM/ECF system. Counsel are directed to the Court's website,
12 www.wawd.uscourts.gov, for a detailed description of the requirements for filing via CM/ECF.
13 Plaintiff shall file all documents electronically. All filings must indicate in the upper right hand
14 corner the name of the magistrate judge to whom the document is directed.

15 Any document filed with the Court must be accompanied by proof that it has been served
16 upon all parties that have entered a notice of appearance in the underlying matter. Plaintiffs shall
17 indicate the date the document is submitted for e-filing as the date of service.

18 (4) Motions

19 Regarding the filing of motions before the Court, the parties are directed to review Local
20 Rule CR 7 in its entirety. A few important points are highlighted below:

21 Any request for court action shall be set forth in a motion, properly filed and served.
22 Pursuant to Local Rule CR 7(b), any argument being offered in support of a motion shall be
23 submitted as a part of the motion itself and not in a separate document. **The motion shall**

1 **include in its caption (immediately below the title of the motion) a designation of the date**
2 **the motion is to be noted for consideration upon the court's motion calendar.**

3 **In all instances where one of the parties to a lawsuit is incarcerated, all categories of**
4 **non-dispositive motions not listed in Local Rule CR 7(d)(1) must be noted for the third**
5 **Friday after the date of filing and service. See Local Rule CR 7(d)(2).**

6 All dispositive motions shall be noted for consideration no earlier than the fourth Friday
7 following filing and service of the motion.

8 For electronic filers, all briefs and affidavits in opposition to either a dispositive or non-
9 dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday
10 immediately preceding the date designated for consideration of the motion.

11 The party making the motion may electronically file and serve not later than 11:59 p.m.
12 on the date designated for consideration of the motion, a reply to the opposing party's briefs and
13 affidavits.

14 (5) Motions to Dismiss and Motions for Summary Judgment

15 Parties filing motions to dismiss pursuant to Rule 12 of the Federal Rules of Civil
16 Procedure and motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil
17 Procedure should acquaint themselves with those rules. As noted above, these motions shall be
18 noted for consideration no earlier than the fourth Friday following filing and service of the
19 motion.

20 Defendants filing motions to dismiss based on a failure to exhaust or motions for
21 summary judgment are advised that they MUST serve a *Rand* notice concurrently with motions to
22 dismiss based on a failure to exhaust and motions for summary judgment so that *pro se* prisoner
23 plaintiffs will have fair, timely and adequate notice of what is required of them in order to

1 oppose those motions. *Woods v. Carey*, 684 F.3d 934, 941 (9th Cir. 2012). The Ninth Circuit
2 has set forth model language for such notices:

3 A motion for summary judgment under Rule 56 of the Federal Rules of Civil
4 Procedure will, if granted, end your case.

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

20 *Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (emphasis added).

21 Defendants who fail to file and serve the required *Rand* notice on plaintiff may have their
22 motion stricken from the Court’s calendar with leave to re-file.

23 (6) Direct Communications with District Judge or Magistrate Judge

No direct communication is to take place with the District Judge or Magistrate Judge with
regard to this case. All relevant information and papers are to be directed to the Clerk.

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(7) The Clerk is directed to send copies of this Order to plaintiff and to the Hon.

James L. Robart.

1 DATED this 15th day of May, 2017.

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BRIAN A. TSUCHIDA
United States Magistrate Judge

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