

JUL 06 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DENNIS MICHAEL GIECK,

Plaintiff - Appellant,

v.

MARTIN EARLE LEVIN; et al.,

Defendants - Appellees.

No. 07-55476

D.C. No. CV-05-01974-H

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Marilyn L. Huff, District Judge, Presiding

Submitted June 16, 2009\*\*

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Dennis Michael Gieck, a California state prisoner, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to serious medical needs in violation of the Eighth

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Amendment. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Sorrels v. McKee*, 290 F.3d 965, 969 (9th Cir. 2002), and we vacate and remand.

The record does not indicate that the district court provided Gieck, who was pro se, with any notice under *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998) (en banc). Further, the error was not harmless because it does not appear that Gieck had recently received a *Rand* notice in any other litigation, and the record does not disclose that he had a complete understanding of the requirements of Federal Rule of Civil Procedure 56. *See id.* at 961-62.

Each party shall bear its own costs on appeal.

**VACATED and REMANDED.**