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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES BOBBY DAVENPORT, III,
Plaintiff,
v.
RABBI KORIK, et al.
Defendants.

No. 2:14-cv-0325 TLN CKD P (TEMP)

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. By order filed May 26, 2015, plaintiff was given the options of proceeding on his original complaint or filing an amended complaint. Plaintiff timely filed an amended complaint (ECF No. 14).

The amended complaint states a cognizable claim under 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). However, the amended complaint states a claim only as to defendant Korik. Plaintiff has not stated a claim against Warden Virga, whom the plaintiff implicates on the basis of Virga’s alleged denial of plaintiff’s inmate appeal. “[I]nmates lack a separate constitutional entitlement to a specific grievance procedure.” Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir.2003). “Therefore, plaintiff cannot state a cognizable civil rights claim against defendants ... based solely on their roles in denying a prison grievance.” Johnson v. Hill, No. 2:10-cv-2522 KJN P, 2010 WL 4386722 at *2 (E.D. Cal. October 28, 2010). If the allegations against defendant Korik are

1 proved, though, plaintiff has a reasonable opportunity to prevail on the merits of his claim that
2 Korik violated his First Amendment right to practice his religion.

3 Plaintiff has requested the appointment of counsel. The United States Supreme Court has
4 ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983
5 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional
6 circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. §
7 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900
8 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court does not find the required
9 exceptional circumstances. Plaintiff's request for the appointment of counsel will therefore be
10 denied.

11 In accordance with the above, IT IS HEREBY ORDERED that:

12 1. Service is appropriate for defendant Korik.

13 2. The Clerk of the Court shall send plaintiff one USM-285 forms, one summons, an
14 instruction sheet and a copy of the amended complaint filed June 19, 2015.

15 3. Within thirty days from the date of this order, plaintiff shall complete the attached
16 Notice of Submission of Documents and submit the following documents to the court:

17 a. The completed Notice of Submission of Documents;

18 b. One completed summons;

19 c. One completed USM-285 form for each defendant listed in number 1 above;

20 and

21 d. Two copies of the endorsed amended complaint filed June 19, 2015.

22 4. Plaintiff need not attempt service on defendants and need not request waiver of service.

23 Upon receipt of the above-described documents, the court will direct the United States Marshal to
24 serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4 without payment
25 of costs.

26 5. Plaintiff's motion for the appointment of counsel (ECF No. 18) is denied.

27 ///

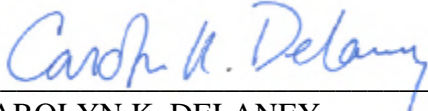
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IT IS RECOMMENDED that defendant Virga be dismissed from this action.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the objections shall be served and filed within fourteen days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: January 26, 2016



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

v.

Plaintiff,

Defendant.

No.

NOTICE OF SUBMISSION OF
DOCUMENTS

Plaintiff hereby submits the following documents in compliance with the court's order
filed _____ :

- _____ completed summons form
- _____ completed USM-285 forms
- _____ copies of the _____

Complaint

DATED:

Plaintiff