

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT MAESHACK,

1:06-cv-00011-GSA-PC

Plaintiff,

ORDER FINDING SERVICE OF COMPLAINT
APPROPRIATE AND FORWARDING
SERVICE DOCUMENTS TO PLAINTIFF FOR
COMPLETION AND RETURN WITHIN
THIRTY DAYS

v.

AVENAL STATE PRISON, et al.,

Defendants.

(Doc. 17.)

Plaintiff Robert Maeshack ("plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on December 22, 2005. On October 27, 2008, this action was reassigned to Magistrate Judge Gary L. Austin for all within the meaning of 28 U.S.C. § 636 (c). (Doc. 20.)

On February 20, 2007, the court dismissed plaintiff's complaint with leave to amend. (Doc. 15.) On March 16, 2007, plaintiff filed an amended complaint. (Doc. 17.) On November 21, 2008, after screening the amended complaint pursuant to 28 U.S.C. § 1915A, the court issued an order for plaintiff to either file a second amended complaint or notify the court of his willingness to proceed only on the claims found cognizable by the court. (Doc. 21.) On December 15, 2008, plaintiff filed written notification to the court that he is willing to proceed only on the claims found cognizable by the court in the amended complaint. (Doc. 22.) The court found that the amended complaint states cognizable claims for relief under section 1983 against defendants Harbison, Dr. Weed, McIntyre

1 and Dr. Sweetland on plaintiff's Eighth Amendment medical care claim and his state law medical
2 malpractice claim.¹ Fed. R. Civ. P. 8(a); Swierkiewicz v. Sorema N. A., 534 U.S. 506, 512-15
3 (2002); Austin v. Terhune, 367 F.3d 1167, 1171 (9th Cir. 2004); Jackson v. Carey, 353 F.3d 750,
4 754 (9th Cir. 2003); Galbraith v. County of Santa Clara, 307 F.3d 1119, 1125-26 (9th Cir. 2002).
5 Accordingly, it is HEREBY ORDERED that:

6 1. Service is appropriate for the following defendants:

7 MTA HARBINSON

8 DR. WEED

9 DR. McINTYRE

10 DR. SWEETLAND

11 2. The Clerk of the Court shall send plaintiff four (4) USM-285 forms, four (4)
12 summonses, a Notice of Submission of Documents form, an instruction sheet and a
13 copy of the amended complaint filed March 16, 2007. (Doc. 17.)

14 3. Within **thirty (30) days** from the date of this order, plaintiff shall complete the
15 attached Notice of Submission of Documents and submit the completed Notice to the
16 court with the following documents:

17 a. Completed summonses;

18 b. One completed USM-285 form for each defendant listed above; and

19 c. Five (5) copies of the endorsed amended complaint filed March 16, 2007.

20 4. Plaintiff need not attempt service on defendants and need not request waiver of
21 service. Upon receipt of the above-described documents, the court will direct the
22 United States Marshal to serve the above-named defendants pursuant to Federal Rule
23 of Civil Procedure 4 without payment of costs; and

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26 ¹ Avenal State Prison was named as a defendant in the case caption of the original complaint, but no claims
27 were alleged against Avenal State Prison. Avenal State Prison was omitted as a defendant in the amended complaint.
28 In an Order issued concurrently with this Order, the court dismissed plaintiff's Due Process and retaliation claims,
based on plaintiff's failure to state a claim under section 1983, and dismissed plaintiff's claims against defendants
Avenal State Prison, Greenough, Smith, and Grazier, based on plaintiff's failure to state any claim against them for
which relief may be granted.

1 5. The failure to comply with this order will result in a recommendation that this action
2 be dismissed.

3
4 IT IS SO ORDERED.

5 **Dated: January 12, 2009**

/s/ Gary S. Austin
 UNITED STATES MAGISTRATE JUDGE