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

SEAN PARKER, et al.,

Plaintiffs,

1:08 CV 1405 WMW PC

vs.

W. ICKE,

Defendant.

ORDER SEVERING ACTION

Plaintiffs are state prisoners proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983.

This court has determined that each plaintiff should proceed separately on his own claim. The Federal Rules of Civil Procedure provide “[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.” Fed. R. Civ. P. 21. Courts have broad discretion regarding severance. See Davis v. Mason County, 927 F.2d 1473, 1479 (9th Cir. 1991).

In the instant action, Plaintiffs are individuals in the custody of the California Department of Corrections, presently confined at Avenal State Prison. In this court’s experience, an action brought by multiple inmate plaintiffs proceeding pro se presents procedural problems

1 that cause delay and confusion. Delay often arises from the frequent transfer of inmates to other
2 facilities or institutions, the changes in address that occur when inmates are released to parole,
3 and the difficulties faced by inmates who attempt to communicate with each other and with
4 unincarcerated individuals.

5 Accordingly, the court will order that Plaintiffs' claims be severed. Plaintiff
6 Parker will proceed in this action, while plaintiff Johns will proceed in a civil action to be opened
7 by the Clerk of the Court. Each plaintiff will proceed with his own action and will be solely
8 responsible for his own action.

9 The Clerk of the Court will be directed to assign the new actions to the same
10 district judge and magistrate judge assigned to the instant action. The Clerk of the Court shall
11 make appropriate adjustment in the assignment of civil cases to compensate for this
12 reassignment.

13 Plaintiff Parker has filed a request for leave to proceed in forma pauperis.
14 However, since the claims will be severed, Plaintiff Johns will be given thirty days to file, in his
15 own action, an amended complaint and a new application for leave to proceed in forma pauperis,
16 using the forms provided by the court with this order. Each plaintiff is cautioned that if an
17 individual action proceeds further it is probable that each plaintiff will incur a liability in the
18 amount of the \$350.00 filing fee, which amount will be collected from the inmate's prison trust
19 account.¹ See 28 U.S.C. § 1915(b).

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

21 1. The claims of Plaintiffs Parker are severed from the claims of Plaintiff Johns;

22 ////

23 2. Plaintiff Parker shall proceed as the sole plaintiff in case 1:08 CV 1405 WMW

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26 ¹ See Information to Prisoners Seeking Leave to Proceed with a Civil Action in Federal
Court In Forma Pauperis Pursuant to 28 U.S.C. § 1915.

1 PC;

2 3. The Clerk of the Court is directed to:

3 a. Open a separate civil action for Plaintiff Johns;

4 b. Assign each action to the district judge and magistrate judge to whom
5 the instant case is assigned and make appropriate adjustment in the assignment of
6 civil cases to compensate for such assignment;

7 c. File and docket a copy of this order in the case opened for Plaintiff
8 Johns;

9 d. Place a copy of the complaint filed September 19, 2008, in each of the
10 files opened for the Plaintiffs Parker and Johns;

11 e. Send each Plaintiff an endorsed copy of his complaint bearing the
12 amended caption and the case number assigned to his own individual action.

13 4. Each Plaintiff's complaint is dismissed;

14 5. The Clerk of the Court is directed to send each plaintiff a new form for filing a
15 civil rights action under 42 U.S.C. § 1983 and a new Application to Proceed In Forma Pauperis
16 By a Prisoner; and

17 6. Each plaintiff is granted thirty days from the date of service of this order to file
18 an amended complaint and a new application to proceed in forma pauperis, using the forms
19 provided by the court with this order. Each plaintiff's documents must bear the docket number
20 assigned to his own individual case, and each complaint must be labeled "Amended Complaint."
21 Failure to file an amended complaint or a new application to proceed in forma pauperis in
22 accordance with this order will result in a recommendation that the plaintiff's action be
23 dismissed.

1 IT IS SO ORDERED.

2 **Dated:** April 8, 2009

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE

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