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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DONNELL WEBB,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION,

Defendant.

Case No. 1:14-cv-01528-MJS (PC)

**ORDER SEVERING CLAIMS OF MARVIN
JENKINS, AND DIRECTING CLERK'S
OFFICE TO OPEN NEW ACTION FOR
MARVIN JENKINS
(ECF No. 7)**

**THIRTY DAY DEADLINE FOR MARVIN
JENKINS TO FILE A COMPLAINT IN HIS
OWN CASE**

**FORTY-FIVE DAY DEADLINE FOR
MARVIN JENKINS TO SUBMIT AN
APPLICATION TO PROCEED IN FORMA
PAUPERIS, OR PAY THE FILING FEE IN
HIS OWN CASE**

Plaintiff Donnell Webb is a state prisoner proceeding pro se in this civil rights action filed on September 29, 2014 pursuant to 42 U.S.C. § 1983. The Complaint, which was dismissed for failure to state a claim, purported to proceed on behalf of class-action plaintiffs including Marvin Jenkins.

On October 31, 2014, Marvin Jenkins filed in this action a letter of joinder asserting his claims.

On November 6, 2014, Plaintiff filed a first amended complaint, raising only his

1 individual claims. (ECF No. 10.) Plaintiff's first amended complaint has not yet been
2 screened, and will be addressed in a separate order.

3 **I. SEVERANCE OF CLAIMS**

4 The Court, in its order dismissing the Complaint, determined that the allegations
5 did not provide a basis for a class action, Fed. R. Civ. P. 23(a)(4); Simon v. Hartford
6 Life, Inc., 546 F.3d 661, 664–65 (9th Cir. 2008), and that this action would proceed as
7 an individual civil suit brought by Plaintiff Donnell Webb in his sole behalf. (See ECF No.
8 5 at n.1.) The Federal Rules of Civil Procedure provide that “[o]n motion or on its own,
9 the court may at any time, on just terms, add or drop a party . . . [or] sever any claim
10 against a party.” Fed. R. Civ. P. 21. Courts have broad discretion regarding severance.
11 See Coleman v. Quaker Oats Co., 232 F.3d 1271, 1297 (9th Cir. 2000); Maddox v.
12 County of Sacramento, No. 2:06-cv-0072-GEB-EFB, 2006 WL 3201078, *2 (E.D. Cal.
13 Nov. 6, 2006). Accordingly, Marvin Jenkins must proceed separately, if at all, on the
14 claims he asserts in the October 31, 2014 letter regarding joinder.

15 Jenkins' claims shall be severed; Plaintiff Webb shall proceed as the sole Plaintiff
16 in this action; and a new action shall be opened for plaintiff Marvin Jenkins. Gaffney v.
17 Riverboat Serv. of Indiana, 451 F.3d 424, 441 (7th Cir. 2006). Marvin Jenkins shall be
18 solely responsible for prosecuting his own action.

19 Since the claims of Marvin Jenkins will be severed, he shall be given thirty days
20 to file, in his own action, a proper complaint. Marvin Jenkins must demonstrate in his
21 individual complaint how the conditions complained of resulted in a deprivation of his
22 constitutional rights. He must set forth “sufficient factual matter . . . to state a claim that
23 is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell
24 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)); accord Moss v. U.S. Secret
25 Service, 572 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls
26 short of meeting this plausibility standard. Iqbal, 556 U.S. at 679; Moss, 572 F.3d at
27 969. The complaint must specifically state how each defendant is involved. Marvin
28 Jenkins must demonstrate that each defendant personally participated in the deprivation

1 of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

2 Marvin Jenkins shall also be required to submit an application to proceed in
3 forma pauperis or pay the \$400.00 filing fee for his own action, within forty-five days.

4 **II. ORDER**

5 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 6 1. Plaintiff Webb shall proceed as the sole plaintiff in case number 1:14-cv-
7 01528-MJS-PC;
- 8 2. The claims of Marvin Jenkins are severed from the claims of Plaintiff
9 Webb;
- 10 3. The Clerk of the Court is directed to:
 - 11 a. Open a separate § 1983 civil rights action for **Marvin Jenkins**, AS-
12 9654, North Kern State Prison, Bldg. # C-1-B, Bunk 150 L, P.O.
13 Box 5004, Delano, CA 93216;
 - 14 b. Assign the new action to the Magistrate Judge to whom the instant
15 case is assigned and make appropriate adjustment in the
16 assignment of civil cases to compensate for such assignment;
 - 17 c. File and docket a copy of this Order in the new action opened for
18 Marvin Jenkins;
 - 19 d. Place a copy of the letter regarding joinder (ECF No. 7), which was
20 filed in the instant action, in the new action opened for Marvin
21 Jenkins;
 - 22 e. Send Marvin Jenkins an endorsed copy of the letter regarding
23 joinder (ECF No. 7), bearing the case number assigned to his own
24 individual action;
 - 25 f. Send Marvin Jenkins a § 1983 civil rights complaint form; and
 - 26 g. Send Marvin Jenkins an application to proceed in forma pauperis.
- 27 4. Within thirty (30) days from the date of service of this Order, Marvin
28 Jenkins shall file an original complaint bearing his own case number and

1 signed under penalty of perjury;

2 5. Within forty-five (45) days from the date of service of this Order, Marvin
3 Jenkins shall submit an application to proceed in forma pauperis, or
4 payment of the \$400.00 filing fee, in his own case; and

5 6. The failure to comply with this Order will result in a recommendation that
6 the action of Marvin Jenkins be dismissed.

7
8 IT IS SO ORDERED.

9 Dated: November 16, 2014

/s/ Michael J. Seng
10 UNITED STATES MAGISTRATE JUDGE