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

LARRY GIRALDES,

No. CIV S-06-2277-MCE-CMK-P

Plaintiff,

vs.

ORDER

ROCHE, et al.,

Defendants.

_____ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s complaint (Doc. 1), filed on October 16, 2006. The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a).

Plaintiff names the following as defendants: Drs. Roche and James. Plaintiff claims that he suffers from “gastroesophageal reflux disease” and “dumping syndrome,” both of which he states are serious medical conditions. Plaintiff alleges that, even though defendants knew of his medical conditions, they refused to provide treatment. Plaintiff claims:

Specifically, Dr. Roche, Chief Medical Officer at [High Desert

1 State Prison] told plaintiff he “does not appreciate” litigators, after
2 plaintiff filed a 1983 suit against [California Medical Facility] doctors and
custody staff

3 Plaintiff asserts that defendant Roche filed declarations on behalf of defendants in this other §
4 1983 case. Plaintiff claims that facilities at High Desert State Prison are inadequate to meet his
5 medical needs but that, nonetheless, defendant Roche has instructed that no transfer requests are
6 to be considered. In particular, plaintiff states that defendant James was told by defendant
7 Roche:

8 No doctor at [High Desert State Prison] will be the one to put a nail in
9 [California Medical Facility’s] coffin. You will get a transfer when your
issues with them are resolved.

10 Plaintiff alleges defendant James is liable because, despite his knowledge of plaintiff’s
11 conditions, he did not provide medical treatment. Finally, plaintiff claims that “the denial of
12 proper placement is a deliberate and intentional effort to ‘cover’ for the defendants in plaintiff’s
13 other suit, and not due to a medical rationale.” Plaintiff seeks monetary damages and various
14 forms of equitable relief.

15 The complaint appears to state a cognizable claim for relief pursuant to 42 U.S.C.
16 § 1983 and 28 U.S.C. § 1915A(b).¹ If the allegations are proven, plaintiff has a reasonable
17 opportunity to prevail on the merits of this action. The court, therefore, finds that service is
18 appropriate and will direct service by the U.S. Marshal without pre-payment of costs. Plaintiff is
19 informed, however, that this action cannot proceed further until plaintiff complies with this
20 order. Plaintiff is warned that failure to comply with this order may result in dismissal of the
21 action. See Local Rule 11-110.

22 ///

23 ¹ The court notes that plaintiff has not set forth any allegations with respect to
24 exhaustion of administrative remedies. However, because exhaustion is not a jurisdictional
25 requirement for bringing suit, see Rumbles v. Hill, 182 F.3d 1064, 1070 (9th Cir. 1999), and
26 because failure to exhaust is an affirmative defense which can only be raised by defendants, see
Wyatt v. Terhune, 280 F.3d 1238, 1245-46 (9th Cir. 2002), dismissal at this time for failure to
exhaust is not appropriate.

1 Accordingly, IT IS HEREBY ORDERED that:

2 1. Service is appropriate for the following defendant(s):

3 ROCHE, and

4 JAMES;

5 2. The Clerk of the Court shall send plaintiff one USM-285 form for each
6 defendant identified above, one summons, an instruction sheet, and a copy of the complaint; and

7 3. Within 30 days of the date of service of this order, plaintiff shall complete
8 the attached Notice of Submission of Documents and submit the following documents to the
9 court:


10 a. The completed Notice of Submission of Documents;

11 b. One completed summons;

12 c. Two completed USM-285 form(s); and

13 d. Three copies of the endorsed complaint.

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15 DATED: October 27, 2006.

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18 **CRAIG M. KELLISON**
19 UNITED STATES MAGISTRATE JUDGE
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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

LARRY GIRALDES,
Plaintiff,

No. CIV S-06-2277-MCE-CMK-P

vs.
ROCHE, et al.,
Defendants.

NOTICE OF SUBMISSION OF DOCUMENTS

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

- 1 completed summons form;
- _____ completed USM-285 form(s); and
- _____ copies of the complaint.

DATED: _____

Plaintiff