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

CLIFTON JEROME MCDANIEL,

Plaintiff,

No. CIV S-07-1189 LEW JFM P

vs.

S. HUBBARD, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. § 1914(a), 1915(b)(1). Plaintiff has been without funds for six months and is currently without funds. Accordingly, the court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments shall be collected and forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 In his complaint, plaintiff raises claims arising from events that took place on July
2 25, 2006 (deliberate indifference to serious medical needs), October 21, 2006 (excessive force)
3 and May 24, 2007 (medical).

4 “Section 1997e(a) of Title 42 of the United States Code provides:

5 No action shall be brought with respect to prison conditions under
6 [42 U.S.C. § 1983], or any other Federal law, by a prisoner
7 confined in any jail, prison, or other correctional facility until such
8 administrative remedies as are available are exhausted.

9 This exhaustion requirement is mandatory. Booth v. Churner, 532 U.S. 731, 741 (2001).”
10 McKinney v. Carey, 311 F.3d 1198, 1199 (9th Cir. 2002); see also Porter v. Nussle, 534 U.S.
11 516, 524 (2002). Exhaustion must precede the filing of the complaint and that compliance with
12 the statute is not achieved by satisfying the exhaustion requirement during the course of an
13 action. McKinney, 311 F.3d at 1199.

14 California’s Department of Corrections provides a four-step
15 grievance process for prisoners who seek review of an
16 administrative decision or perceived mistreatment. Within fifteen
17 working days of “the event or decision being appealed,” the inmate
18 must ordinarily file an “informal” appeal, through which “the
19 appellant and staff involved in the action or decision attempt to
20 resolve the grievance informally.” Cal.Code Regs., tit. 15, §§
21 3084.5(a), 3084.6(c). [Footnote omitted.] If the issue is not
22 resolved during the informal appeal, the grievant next proceeds to
23 the first formal appeal level, usually conducted by the prison’s
24 Appeals Coordinator. Id. §§ 3084.5(b), 3084.6(c). Next are the
25 second level, providing review by the institution’s head or a
26 regional parole administrator, and the third level, in which review
is conducted by a designee of the Director of the Department of
Corrections. [Footnote omitted.] Id. § 3084.5(e)(1)-(2).

Brown v. Valoff, at 929-30.

22 Here, plaintiff has provided confirmation that he filed prison grievances regarding
23 the first two events through the Director’s or third level review. However, plaintiff has provided
24 no evidence of administrative exhaustion with regard to the May 24, 2007 event. Plaintiff must
25 exhaust his claims arising from the May 24, 2007 prior to bringing federal suit. Accordingly, the
26 court will not order service of process on defendants Hightman, Appleberry or McKinzie.

1 Plaintiff also names Warden S. Hubbard as a defendant in this action. The Civil
2 Rights Act under which this action was filed provides as follows:

3 Every person who, under color of [state law] . . . subjects, or causes
4 to be subjected, any citizen of the United States . . . to the
5 deprivation of any rights, privileges, or immunities secured by the
6 Constitution . . . shall be liable to the party injured in an action at
7 law, suit in equity, or other proper proceeding for redress.

8 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
9 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
10 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
11 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
12 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
13 omits to perform an act which he is legally required to do that causes the deprivation of which
14 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

15 Moreover, supervisory personnel are generally not liable under § 1983 for the
16 actions of their employees under a theory of respondeat superior and, therefore, when a named
17 defendant holds a supervisory position, the causal link between him and the claimed
18 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
19 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.
20 941 (1979). Vague and conclusory allegations concerning the involvement of official personnel
21 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th
22 Cir. 1982). Plaintiff's claims against Warden Hubbard are based on respondeat superior;
23 accordingly, the court will not order service of process on defendant Hubbard.

24 The complaint states a cognizable claim for relief pursuant to 42 U.S.C. § 1983
25 and 28 U.S.C. § 1915A(b) against the remaining defendants with regard to the claims arising
26 from the events of July 25, 2006 and October 21, 2006. If the allegations of the complaint are
proven, plaintiff has a reasonable opportunity to prevail on the merits of this action.

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

- 2 1. Plaintiff's request for leave to proceed in forma pauperis is granted.
3 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

4 The fee shall be collected and paid in accordance with this court's order to the Director of the
5 California Department of Corrections and Rehabilitation filed concurrently herewith.

6 3. Service is appropriate for the following defendants: C/O Carson, C/O Cobbs,
7 C/O Swan, Lt. Cueva and Lt. S. Hall.

8 4. The Clerk of the Court shall send plaintiff five USM-285 forms, one summons,
9 an instruction sheet and a copy of the complaint filed June 19, 2007.

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

- 12 a. The completed Notice of Submission of Documents;
13 b. One completed summons;
14 c. One completed USM-285 form for each defendant listed in number 3
15 above; and
16 d. Six copies of the endorsed complaint filed June 19, 2007.

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

21 DATED: July 3, 2007.

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24 UNITED STATES MAGISTRATE JUDGE

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

CLIFTON JEROME MCDANIEL,

Plaintiff,

No. CIV S-07-1189 LEW JFM P

vs.

S. HUBBARD, et al.,

NOTICE OF SUBMISSION

Defendants.

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/Amended Complaint

DATED:

Plaintiff