

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

|                          |   |                        |
|--------------------------|---|------------------------|
| DAMON HAMILTON,          | ) | No. CIV. S-08-0784 DAE |
|                          | ) |                        |
| Plaintiff,               | ) |                        |
|                          | ) |                        |
| vs.                      | ) |                        |
|                          | ) |                        |
| C/O FITZPATRICK, et al., | ) |                        |
|                          | ) |                        |
| Defendants.              | ) |                        |
| _____                    | ) |                        |

ORDER

This proceeding was referred to this Court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1). The Court hereby permits Plaintiff to perfect service upon the following Defendants: Correctional Officer (“C/O”) Fitzpatrick, Sergeant (“Sgt.”) Scotland, C/O Primm, C/O Rosario, Sgt. Guillory, and Lieutenant (“Lt.”) Young.

Plaintiff is a state prisoner proceeding pro se. Plaintiff brings suit pursuant to 42 U.S.C. § 1983 for alleged use of excessive force. Plaintiff’s request to proceed in forma pauperis was granted by Magistrate Judge Gregory G. Hollows in an order dated October 14, 2008 (the “IFP Order”). (Doc. # 5.) The IFP Order determined that Plaintiff states a colorable claim for excessive force against

Defendants C/O Fitzpatrick, Sgt. Scotland, C/O Primm, C/O Rosario, Sgt. Guillory, and Lt. Young, pursuant to 42 U.S.C. § 1983. (IFP Order at 3.)

The IFP Order, however, dismissed Plaintiff's claims against Lt. Sandy and Lt. Blackwell because Plaintiff failed to state a colorable claim against these defendants. The Court, in consideration of Plaintiff's pro se status, granted Plaintiff leave to amend his complaint within 30 days to properly state a claim against Lt. Sandy and Lt. Blackwell. (IFP Order at 3-4.) Plaintiff, however, did not amend his complaint. Pursuant to the IFP Order, therefore, claims against Lt. Sandy and Lt. Blackwell are dismissed with prejudice in this action, although Plaintiff may proceed against other named Defendants.

Accordingly, IT IS HEREBY ORDERED that:

- (1) Service of the complaint is appropriate for the following Defendants: Fitzpatrick, Scotland, Primm, Rosario, Guillory, and Young.
- (2) The Clerk of the Court shall send Plaintiff six USM-285 forms, one summons, and instruction sheet and a copy of the complaint filed April 14, 2008.
- (3) Within thirty days from the date of this Order, Plaintiff shall complete the attached Notice of Submission of Documents and submit all of the following documents to the Court at the same time:

- a. The completed, signed Notice of Submission of Documents;
- b. One completed summons;
- c. One completed USM-285 form for each Defendant listed in number (1) above; and
- d. Seven copies of the complaint filed April 14, 2008.

(4) Plaintiff shall not attempt to effect service of the complaint on the above-named Defendants or request a waiver of service of summons from any Defendant. Upon receipt of the above-described documents, the Court directs the United States Marshal to serve the above-named Defendants pursuant to the Federal Rules of Civil Procedure 4 without payment of costs.

DATED: Honolulu, Hawaii, July 2, 2009.



  
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David Alan Ezra  
United States District Judge

Hamilton v. Fitzpatrick, et al., No. CIV. S-08-0784 DAE; ORDER