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

JOHN MICHAEL KIRK,

Plaintiff,

No. 2:08-cv-02249-SRT

vs.

T. FELKER, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has filed an application to proceed in forma pauperis under 28 U.S.C. § 1915. Plaintiff has submitted an in forma pauperis application that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, plaintiff will be granted leave to proceed in forma pauperis.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. *See* 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. *See* 28 U.S.C. § 1915(b)(1). Plaintiff will be obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will 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. *See* 28 U.S.C. §

1915(b)(2).

1 Plaintiff's complaint states a cognizable claim for relief pursuant to 42 U.S.C. § 1983 and  
2 28 U.S.C. § 1915A(b). A "prisoner[]" can establish an eighth amendment violation with respect to  
3 medical care if [he] can prove there has been a deliberate indifference to [his] serious medical  
4 needs." *Hunt v. Dental Dept.*, 865 F.2d 198, 200 (9th Cir. 1989). Kirk's complaint contains an  
5 arguable basis in law and fact, and if the allegations are proven, plaintiff has a reasonable  
6 opportunity to prevail on the merits of his claim.

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

- 8 1. Plaintiff's March 7, 2008 application to proceed in forma pauperis is granted.
- 9 2. Service is appropriate for the following defendants: Warden Felker, Chief Director of  
10 Corrections N. Grannis, Dr. James, and Dr. David.
- 11 3. The Clerk of the Court shall send plaintiff 4 USM-285 forms, one summons, an  
12 instruction sheet and a copy of the complaint filed February 5, 2008.
- 13 4. By Tuesday, May 12, 2009, plaintiff shall complete the attached Notice of Submission  
14 of Documents and submit the following documents to the court:
  - 15 a. The completed Notice of Submission of Documents;
  - 16 b. One completed summons;
  - 17 c. One completed USM-285 form for each defendant listed in number 2 above;
  - 18 d. 5 copies of the complaint filed February 5, 2008.
- 19 5. Plaintiff need not attempt service on defendants and need not request waiver of service.

20 Upon receipt of the above-described documents, the court will direct the United States Marshal to  
21 serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4 without payment  
22 of costs.

23 IT IS SO ORDERED.

24 DATED: April 9, 2009

/s/ Sidney R. Thomas

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Sidney R. Thomas, United States Circuit Judge  
26 Sitting by Designation

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Plaintiff,

No. 2:08-cv-02249-SRT

vs.

T. FELKER, et al.,

Defendants.

NOTICE OF SUBMISSION

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

DATED:

\_\_\_\_\_  
Plaintiff