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

JAMES R. FEATHERSTONE,

Plaintiff,

No. 2:08-cv-2354-JFM (PC)

vs.

PERRY RENIFF, Sheriff, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. By order filed April 24, 2009, plaintiff's amended complaint was dismissed with leave to file a second amended complaint. Plaintiff has now filed a second amended complaint.

Plaintiff names two defendants in the second amended complaint, the California Department of Corrections and Rehabilitation (CDCR), and its Secretary, Matthew Cate.¹ The Eleventh Amendment serves as a jurisdictional bar to suits brought by private parties against a state or state agency unless the state or the agency consents to such suit. See Quern v. Jordan, 440 U.S. 332 (1979); Alabama v. Pugh, 438 U.S. 781 (1978)(per curiam); Jackson v. Hayakawa,

¹ Defendant Cate is identified in the second amended complaint at Mathew Kate – Director C.D.C.R.

1 682 F.2d 1344, 1349-50 (9th Cir. 1982). In the instant case, the State of California has not
2 consented to suit. Accordingly, the court will not order service of process on the CDCR. The
3 second amended complaint states a cognizable claim for relief against Matthew Cate pursuant to
4 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the allegations of the second amended complaint
5 are proven, plaintiff has a reasonable opportunity to prevail on the merits of this action. There
6 are no allegations in the second amended complaint against Perry Reniff or the Butte County
7 Sheriff's Department, both of whom answered the original complaint. Accordingly, Sheriff
8 Reniff and the Butte County Sheriff's Department will not be required to answer the second
9 amended complaint or to appear further in this action.

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

11 1. Service is appropriate for the following defendant: Matthew Cate.

12 2. The Clerk of the Court shall send plaintiff one USM-285 forms, one summons,
13 an instruction sheet and a copy of the second amended complaint filed May 26, 2009.

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

16 a. The completed Notice of Submission of Documents;

17 b. One completed summons;

18 c. One completed USM-285 form for the defendant listed in number 1
19 above; and

20 d. Two copies of the endorsed second amended complaint filed May 26,
21 2009.

22 4. Plaintiff need not attempt service on defendant and need not request waiver of
23 service. Upon receipt of the above-described documents, the court will direct the United States
24 Marshal to serve the above-named defendant pursuant to Federal Rule of Civil Procedure 4
25 without payment of costs.

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5. Perry Reniff and the Butte County Sheriff's Department shall not be required
to answer the second amended complaint or to appear further in this action.

DATED: August 20, 2009.


UNITED STATES MAGISTRATE JUDGE

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

JAMES R. FEATHERSTONE,

Plaintiff,

No. 2:08-cv-2354-JFM (PC)

vs.

PERRY RENIFF, Sheriff, 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 _____
Second Amended Complaint

DATED:

Plaintiff