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

COREY LOVELL ARNOLD,

Plaintiff,

No. CIV S-08-2886 DAD P

vs.

M. WILLIAMS, 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. This proceeding was referred to the undersigned magistrate judge in accordance with Local Rule 72-302 and 28 U.S.C. § 636(b)(1).

Plaintiff has submitted an in forma pauperis declaration 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

1 the preceding month's income credited to plaintiff's prison trust account. These payments will
2 be collected and forwarded by the appropriate agency to the Clerk of the Court each time the
3 amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. See 28 U.S.C.
4 § 1915(b)(2).

5 The court finds that plaintiff's complaint states a cognizable claim for relief under
6 the Fourteenth Amendment against defendant Williams. If the allegations of the complaint are
7 proven, plaintiff has a reasonable opportunity to prevail on the merits of this action. The court
8 also finds, however, that plaintiff's complaint does not state a cognizable claim against High
9 Desert State Prison. The Eleventh Amendment serves as a jurisdictional bar to suits brought by
10 private parties against a state or state agency unless the state or the agency consents to such suit.
11 See Quern v. Jordan, 440 U.S. 332, 340 (1979); Alabama v. Pugh, 438 U.S. 781, 782 (1978);
12 Jackson v. Hayakawa, 682 F.2d 1344, 1349-50 (9th Cir. 1982). In the instant case, High Desert
13 State Prison has not consented to suit.

14 Accordingly, IT IS HEREBY ORDERED that:

15 1. Plaintiff's December 1, 2008 application to proceed in forma pauperis (Doc.
16 No. 2) is granted.

17 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.
18 The fee shall be collected and paid in accordance with this court's order to the Director of the
19 California Department of Corrections and Rehabilitation filed concurrently herewith.

20 3. Service of the complaint is appropriate for defendant Williams.

21 4. The Clerk of the Court shall send plaintiff one USM-285 form, one summons,
22 an instruction sheet, and a copy of the complaint filed December 1, 2008.

23 5. Within thirty days from the date of this order, plaintiff shall complete the
24 attached Notice of Submission of Documents and submit all of the following documents to the
25 court at the same time:

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- a. The completed, signed Notice of Submission of Documents;
- b. One completed summons;
- c. One completed USM-285 form for the defendant listed in number 3 above; and
- d. Two copies of the original complaint, including the exhibits attached thereto, filed December 1, 2008.

6. Plaintiff shall not attempt to effect service of the complaint on the defendant or request a waiver of service of summons from the defendant. Upon receipt of the above-described documents, the court will direct the United States Marshal to serve the above-named defendant pursuant to Federal Rule of Civil Procedure 4 without payment of costs.

DATED: January 23, 2009.



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

DAD:9
arno2886.1a

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

COREY LOVELL ARNOLD,

Plaintiff,

No. CIV S-08-2886 DAD P

vs.

M. WILLIAMS, et al.,

NOTICE OF SUBMISSION

Defendants.

OF DOCUMENTS

_____ /

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

_____ one completed summons form;

_____ one completed USM-285 form; and

_____ two true and exact copies of the complaint, including the exhibits attached
thereto, filed December 1, 2008.

DATED: _____.

Plaintiff