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

TRI NGUYEN,

Plaintiff,

No. 2:08-cv-2983 JAM JFM (PC)

vs.

JOSEPH BICK, CMO, MD., 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). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly

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

5 In his complaint, plaintiff contends he is in urgent need of back surgery and his
6 back pain is slowly getting worse. Plaintiff names numerous doctors as defendants. However,
7 plaintiff concedes that "most of the defendants, Dr. Zhu, Dr. Dhillion, M.D., R.L. Andreasen and
8 C. McKenzie, informed plaintiff he may have back surgery he is now approved for." (Complt. at
9 8:1.) Indeed, Dr. Dhillion submitted a request for spinal surgery on October 17, 2007. (Complt.
10 at 5.) Dr. Andreasen partially granted plaintiff's appeal. (Complt. at 6.) The Health Care
11 Appeals Coordinator approved plaintiff to see Dr. Huffman, who gave plaintiff an epidural
12 injection for pain. (Complt. at 7.) These actions do not state a cognizable claim under the Eighth
13 Amendment; accordingly, the court will not order service of process on defendants Zhu, Dhillion,
14 Andreasen, McKenzie, or the Health Care Appeals Coordinator.

15 There are no charging allegations against defendant Knowles, M. Cry, or the
16 Health Care Manager. The court will not order service of process on these defendants.

17 Dr. Joseph Bick, however, denied plaintiff's request for surgery. N. Grannis
18 denied plaintiff's grievance seeking the surgery. The complaint states a cognizable claim for
19 relief pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b) against these defendants. If the
20 allegations of the complaint are proven, plaintiff has a reasonable opportunity to prevail on the
21 merits of this action.

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

23 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

24 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

25 Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
26 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the

1 Director of the California Department of Corrections and Rehabilitation filed concurrently
2 herewith.

3 3. Service is appropriate for the following defendants: Dr. Joseph Bick and N.
4 Grannis.

5 4. The Clerk of the Court shall send plaintiff two USM-285 forms, one summons,
6 an instruction sheet and a copy of the complaint filed December 8, 2008.

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

9 a. The completed Notice of Submission of Documents;

10 b. One completed summons;

11 c. One completed USM-285 form for each defendant listed in number 3
12 above; and

13 d. Three copies of the endorsed complaint filed December 8, 2008.

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

18 DATED: April 1, 2009.

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21 UNITED STATES MAGISTRATE JUDGE

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

TRI NGUYEN,

Plaintiff,

No. 2:08-cv-2983 JAM JFM (PC)

vs.

JOSEPH BICK, CMO, MD., 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