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

CURTIS WILSON,

Plaintiff,

No. CIV S-09-0827 MCE DAD P

vs.

STATE OF CALIFORNIA, 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 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). An initial partial filing fee of \$0.73 will be assessed by this order. See 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 prison trust account and forward it to

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

6 Plaintiff's complaint appears to state cognizable claims for relief pursuant to 42
7 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the allegations of the complaint are proven, plaintiff
8 has a reasonable opportunity to prevail on the merits of this action against defendant Taylor.
9 However, the State of California is not a proper defendant and the court will not order service on
10 this defendant.

11 The Civil Rights Act under which this action was filed provides as follows:

12 Every person who, under color of [state law] . . . subjects, or causes
13 to be subjected, any citizen of the United States . . . to the
14 deprivation of any rights, privileges, or immunities secured by the
Constitution . . . shall be liable to the party injured in an action at
law, suit in equity, or other proper proceeding for redress.

15 42 U.S.C. § 1983. "A person 'subjects' another to the deprivation of a constitutional right,
16 within the meaning of § 1983, if he does an affirmative act, participates in another's affirmative
17 acts or omits to perform an act which he is legally required to do that causes the deprivation of
18 which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). The State of
19 California is not a "person" within the meaning of the statute. Will v. Michigan Dep't of State
20 Police, 491 U.S. 58, 70-71 (1989); Wolfe v. Strankman, 392 F.3d 358, 364 (9th Cir. Dec. 14,
21 2004). Also, under the Eleventh Amendment of the U.S. Constitution, a state or state agency
22 may not be sued in federal court without its consent. Pennhurst State Sch. & Hosp. v.
23 Halderman, 465 U.S. 89, 100 (1984); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

24 Accordingly, IT IS HEREBY ORDERED that:

25 1. Plaintiff's March 25, 2009 application to proceed in forma pauperis (Doc. No.
26 2) is granted.

1 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.
2 Plaintiff is assessed an initial partial filing fee of \$0.73. All fees shall be collected and paid in
3 accordance with this court's order to the Director of the California Department of Corrections
4 and Rehabilitation filed concurrently herewith.

5 3. Service of the complaint is appropriate for defendant S. Taylor.

6 4. The Clerk of the Court shall send plaintiff one USM-285 form, one summons,
7 an instruction sheet, and a copy of the complaint filed March 25, 2009.

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

11 a. The completed, signed Notice of Submission of Documents;

12 b. One completed summons;

13 c. One completed USM-285 form for the defendant listed in number 3
14 above; and

15 d. Two copies of the endorsed complaint filed March 25, 2009.

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

20 DATED: April 20, 2009.

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23 _____
24 DALE A. DROZD
25 UNITED STATES MAGISTRATE JUDGE
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CURTIS WILSON,

Plaintiff,

No. CIV S-09-0827 MCE DAD P

vs.

STATE OF CALIFORNIA, 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;

_____ [#] completed USM-285 forms; and

_____ [#] true and exact copies of the complaint filed March 25, 2009.

DATED: _____.

Plaintiff