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

MARC ANTHONY LOWELL ENDSLEY,

Plaintiff,

vs.

No. CIV S- 09-2311 WBS GGH P

STEPHEN MAYBERG, et al,

Defendants.

ORDER

_____ /

Plaintiff was committed to a state mental hospital following a verdict of not guilty by reason of insanity in a criminal matter. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted an affidavit making the showing required by 28 U.S.C. § 1915(a)(1). As plaintiff is not confined pursuant to a criminal conviction, the court finds, under Page v. Torrey, 201 F.3d 1136, (9th Cir. 2000), he is not required to provide a copy of a prisoner trust fund account statement or to exhaust available administrative remedies.

Accordingly, the request to proceed in forma pauperis will be granted.

The determination that plaintiff may proceed in forma pauperis does not complete the required inquiry. Pursuant to 28 U.S.C. § 1915(e)(2), the court is directed to dismiss the case

1 at any time if it determines the allegation of poverty is untrue, or the action is frivolous or
2 malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against
3 an immune defendant. The court cannot make this determination on the present record.

4 Therefore, the court reserves decision on these issues until the record is sufficiently developed.

5 Good cause appearing, IT IS ORDERED that:

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

7 2. Service is appropriate for the following defendants: Stephen Mayberg,¹ Joseph
8 Malancharuvil, Octavio Luna, Jon DeMorales, Cynthia Radavsky.

9 3. The Clerk of the Court shall send plaintiff five (5) USM-285 forms, one
10 summons, an instruction sheet and a copy of the complaint filed August 20, 2009.

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

13 a. The completed Notice of Submission of Documents;

14 b. One completed summons;

15 c. One completed USM-285 form for each defendant listed in number 2
16 above; and

17 d. Six (6) copies of the endorsed complaint filed August 20, 2009.

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23 _____
24 ¹ Although plaintiff has expressly stated that he sues the defendants each in his/her
25 individual capacity, he adds that he seeks to name in an official capacity whomever is the
26 Director of the California Department of Mental Health. As plaintiff identifies defendant
Mayberg as the Director of the Cal. Dept. of Mental Health, therefore, the court will find that this
defendant is sued both in his individual and official capacities.

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

DATED: October 26, 2009

/s/ Gregory G. Hollows
UNITED STATES MAGISTRATE JUDGE

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FOR THE EASTERN DISTRICT OF CALIFORNIA

MARC ANTHONY LOWELL ENDSLEY,

Plaintiff,

vs.

No. CIV S- 09-2311 WBS GGH P

STEPHEN MAYBERG, et al.

Defendants.

NOTICE OF SUBMISSION
OF DOCUMENTS

_____ /

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

- 1 completed summons form
- 5 completed USM-285 forms
- 6 copies of the August 20, 2009
Complaint