

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

ROBERT BENYAMINI,

Plaintiff,

No. CIV S-10-0101 FCD GGH P

vs.

V. OGBEIDE, et al.,

Defendants.

ORDER &

FINDINGS AND RECOMMENDATIONS

_____ /

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 30, 2010 (docket # 5), plaintiff's claims against two of the defendants named in his original complaint were dismissed with leave to file an amended complaint. Plaintiff elected not to file an amended complaint, but instead, on May 25, 2010, sought reconsideration of the order of April 30, 2010. The motion was untimely and was denied by the district judge. See Order, filed on June 28, 2010 (docket # 12).

As noted in the April 30, 2010 order, the complaint states a colorable claim for relief against defendants Correctional Officers B. Baker and S. Byrd, pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the allegations of the complaint are proven, plaintiff has a reasonable opportunity to prevail on the merits of this action.

\\\\\\

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

2 1. Service is appropriate for the following defendants: Correctional Officer (C/O)
3 B. Baker; and C/O S. Byrd.

4 2. The Clerk of the Court shall send plaintiff two (2) USM-285 forms, one
5 summons, an instruction sheet and a copy of the complaint filed January 13, 2010.

6 3. Within twenty-eight days from the date of this order, plaintiff shall complete
7 the attached Notice of Submission of Documents and submit the following documents to the
8 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 1
12 above; and

13 d. Three (3) copies of the endorsed complaint filed January 13, 2010.

14 4. 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 IT IS ALSO RECOMMENDED that, for the reasons set forth in the April 30,
19 2010, order (docket # 5), defendants Ogbeide and Vicks be dismissed from this action.

20 These findings and recommendations are submitted to the United States District
21 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
22 days after being served with these findings and recommendations, plaintiff may file written
23 objections with the court. Such a document should be captioned "Objections to Magistrate
24 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections

25 \\\

26 \\\

1 within the specified time may waive the right to appeal the District Court's order. Martinez v.
2 Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: August 18, 2010

4 /s/ Gregory G. Hollows

5 UNITED STATES MAGISTRATE JUDGE

6 GGH:009
7 beny0101.1+

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

ROBERT BENYAMINI,

Plaintiff,

No. CIV S-10-0101 FCD GGH P

vs.

V. OGBEIDE, 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

2 completed USM-285 forms

3 copies of the January 13, 2010
Complaint

DATED:

Plaintiff