

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

TIMOTHY J. OSBORNE,

Plaintiff, No. CIV S-10-0216 EFB P

VS.

POTTER, et. al,

Defendants. ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff's consent. *See* 28 U.S.C. § 636(b)(1); *see also* E.D. Cal. Local Rules, Appx. A, at (k)(4).

Plaintiff filed a complaint on January 27, 2010. Dckt. No. 1. He filed a motion to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 on the same date. Dckt. No. 2. Plaintiff's declaration makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

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1 Plaintiff then filed two motions to amend the complaint and three proposed amended
2 complaints. Dckt. Nos. 5, 7, 8, 9. Pursuant to Rule 15(a)(1) of the Federal Rules of Civil
3 Procedure, plaintiff is free to amend his pleading as a matter of course before defendants have
4 filed a responsive pleading. The court will therefore deny plaintiff's motions to amend his
5 complaint as unnecessary, and will, by separate order, screen the March 11, 2010 amended
6 complaint, which supersedes the other complaints. *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
7 1967).

8 Plaintiff also filed a motion for service of summons by the U.S. Marshal, and a motion
9 for extension of time for service of summons. Dckt. Nos. 10, 13. The court will determine
10 whether service is appropriate when it screens the complaint.

11 Finally, plaintiff filed two motions to vacate his Consent to Proceed before a United
12 States Magistrate Judge. "The court may, for good cause shown on its own motion, or under
13 extraordinary circumstances shown by any party, vacate a reference of a civil matter to a
14 magistrate judge." 28 U.S.C. §636(c)(4). In this case, the court finds that plaintiff has not
15 shown extraordinary circumstances, and his motions to vacate his consent must be denied.

16 Accordingly, it is ORDERED that:

17 1. Plaintiff's request to proceed *in forma pauperis* is granted.

18 2. Plaintiff must pay the statutory filing fee of \$350 for this action. All payments shall be
19 collected and paid in accordance with the notice to the Director of the California Department of
20 Corrections and Rehabilitation filed concurrently herewith.

21 3. Plaintiff's motions to amend his complaint, Dckt. Nos. 5 and 7, are denied as
22 unnecessary.

23 4. Plaintiff's motion for service of summons and motion for extension of time, Dckt.
24 Nos. 10 and 13, are denied as unnecessary.

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1 5. Plaintiff's motions to vacate his Consent to Proceed before a United States Magistrate
2 Judge, Dckt. Nos. 14 and 15, are denied.

3 Dated: June 23, 2010.

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5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE