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

BILLY PAUL BIRDWELL, et al.,

Plaintiffs,

No. CIV S-10-0719 GGH P

vs.

M. CATES, et al.,

Defendants.

ORDER

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Plaintiffs are state prisoners proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983.

This court has determined that each plaintiff should proceed separately on his own claim. The Federal Rules of Civil Procedure provide “[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.” Fed. R. Civ. P. 21. Courts have broad discretion regarding severance. See Davis v. Mason County, 927 F.2d 1473, 1479 (9th Cir. 1991).

In the instant action, plaintiffs are individuals in the custody of the California Department of Corrections and Rehabilitation, presently confined at Mule Creek State Prison. In this court’s experience, an action brought by multiple inmate plaintiffs proceeding pro se

1 presents procedural problems that cause delay and confusion. Delay often arises from the  
2 frequent transfer of inmates to other facilities or institutions, the changes in address that occur  
3 when inmates are released to parole, and the difficulties faced by inmates who attempt to  
4 communicate with each other and with unincarcerated individuals.

5 Accordingly, the court will order that plaintiffs' claims be severed. Plaintiff  
6 Birdwell will proceed in this action, while plaintiffs Mayfield, Lefavour, Fairwell and Rackley  
7 will proceed in 4 civil actions to be opened by the Clerk of the Court. Each plaintiff will proceed  
8 with his own action and will be solely responsible for his own action.

9 The Clerk of the Court will be directed to assign the new actions to the same  
10 district judge and magistrate judge assigned to the instant action. The Clerk of the Court shall  
11 make appropriate adjustment in the assignment of civil cases to compensate for this  
12 reassignment.

13 Only plaintiff Birdwell has filed an application to proceed in forma pauperis.  
14 Accordingly, plaintiffs Mayfield, Lefavour, Fairwell and Rackley will be given thirty days to file,  
15 in his own action an application for leave to proceed in forma pauperis, using the form provided  
16 by the court with this order. Each plaintiff is cautioned that if an individual action proceeds  
17 further it is probable that each plaintiff will incur a liability in the amount of the \$350.00 filing  
18 fee, which amount will be collected from the inmate's prison trust account.<sup>1</sup> See 28 U.S.C. §  
19 1915(b).

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

21 1. The claims of plaintiffs Mayfield, Lefavour, Fairwell and Rackley are severed  
22 from the claims of plaintiff Birdwell;

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26 <sup>1</sup> See Information to Prisoners Seeking Leave to Proceed with a Civil Action in Federal  
Court In Forma Pauperis Pursuant to 28 U.S.C. § 1915.

1 2. Plaintiff Birdwell shall proceed as the sole plaintiff in case No. CIV S-10-0719  
2 GGH P;

3 3. The Clerk of the Court is directed to:

4 a. Open 4 separate civil actions for plaintiffs Mayfield, Lefavour, Fairwell  
5 and Rackley;

6 b. Assign each action to the district judge and magistrate judge to whom  
7 the instant case is assigned and make appropriate adjustment in the assignment of  
8 civil cases to compensate for such assignment;

9 c. File and docket a copy of this order in this action and the four other  
10 actions opened for the plaintiffs listed in number 3a above;

11 d. Place a copy of the complaint filed March 25, 2010, in each of the 4  
12 files opened for the plaintiffs listed in number 3a above;

13 e. Strike from the caption of each plaintiff's complaint all plaintiffs'  
14 names except the name of the individual plaintiff proceeding in the action;

15 4. The Clerk of the Court is directed to send each plaintiff a new Application to  
16 Proceed In Forma Pauperis By a Prisoner; and

17 4. Each plaintiff, but for plaintiff Birdwell, is granted thirty days from the date of  
18 service of this order to file a new application to proceed in forma pauperis, using the form  
19 provided by the court with this order. Each plaintiff's documents must bear the docket number  
20 assigned to his own individual case. Failure to file a new application to proceed in forma  
21 pauperis in accordance with this order will result in a recommendation that the plaintiff's action  
22 be dismissed.

23 DATED: April 30, 2010

24 /s/ Gregory G. Hollows

25 UNITED STATES MAGISTRATE JUDGE

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