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

DWAYNE B. BURNS,  
Plaintiff,

No. CIV S-11-0217-KJM-CMK

vs.

ORDER

WILLIAMS,  
Defendant.

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Plaintiff, who is proceeding pro se, brings this civil action alleging, among other things, violations of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, et seq., as well as violations of his civil rights under 42 U.S.C. § 1983. Pending before the court is plaintiff’s complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court is also required to screen complaints brought by litigants who have been granted leave to proceed in forma pauperis. See 28 U.S.C. § 1915(e)(2). Under these screening provisions, the court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief

1 from a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(A), (B) and  
2 1915A(b)(1), (2). Moreover, pursuant to Federal Rule of Civil Procedure 12(h), this court must  
3 dismiss an action “[w]henver it appears . . . that the court lacks jurisdiction of the subject  
4 matter . . . .” Because plaintiff, who is not a prisoner, has been granted leave to proceed in forma  
5 pauperis, the court will screen the complaint pursuant to § 1915(e)(2). Pursuant to Rule 12(h),  
6 the court will also consider as a threshold matter whether it has subject-matter jurisdiction.

7 As outlined in the court’s August 15, 2011, findings and recommendations and  
8 March 26, 2012, order, the complaint states a cognizable § 1983 claim against defendant  
9 Williams based on retaliation. The court concludes that it has subject matter jurisdiction and that  
10 the complaint is appropriate for service by the United States Marshal without pre-payment of  
11 costs. If plaintiff desires service of process by the United States Marshal without pre-payment of  
12 costs, plaintiff must comply with the requirements outlined below. Plaintiff is warned that  
13 failure to comply with this order, or otherwise effect service pursuant to Federal Rule of Civil  
14 Procedure 4, may result in dismissal of the action for lack of prosecution and failure to comply  
15 with court rules and orders. See Local Rule 110.

16 Accordingly, IT IS HEREBY ORDERED that:

17 1. The Clerk of the Court shall issue a summons in a civil case, the  
18 undersigned’s new case documents, and an order setting this matter for an initial scheduling  
19 conference;

20 2. The Clerk of the Court shall send plaintiff the summons, one USM-285  
21 form, and a copy of the complaint;

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1           3.       Within 15 days from the date of this order, plaintiff shall complete the  
2 summons by indicating the addresses of the named defendants and shall submit to the United  
3 States Marshal at the address indicated below the following documents:

- 4                   a.       The completed summons;  
5                   b.       One completed USM-285 form for each named defendant;  
6                   c.       Two copies of the complaint; and  
7                   d.       One copy of the court's initial scheduling conference order issued  
8 herewith;

9           4.       Within 20 days of the date of this order, plaintiff shall file a notice  
10 indicating that the documents described above have been submitted to the United States Marshal,  
11 or a notice that plaintiff intends to serve the summons and complaint without assistance from the  
12 United States Marshal;

13           5.       If plaintiff seeks the assistance of the United States Marshal, the United  
14 States Marshal is directed to serve all process without pre-payment of costs not later than 60 days  
15 from the date of this order, such service of process to be completed by serving a copy of the  
16 summons, complaint, and initial scheduling conference order on the defendants at the addresses  
17 provided by plaintiff; and

18           6.       The Clerk of the Court is directed to serve a copy of this order on the  
19 United States Marshal at 501 "I" Street, Sacramento, CA, 95814.

20  
21 DATED: April 30, 2012

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23 **CRAIG M. KELLISON**  
24 UNITED STATES MAGISTRATE JUDGE  
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