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

RAYMOND D. JACKSON,

Plaintiff,

No. 2: 11-cv-1157 KJN P

vs.

STEVEN FLETCHER, et al.,

Defendants.

ORDER and

FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding without counsel. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly

1 payments of twenty percent of the preceding month's income credited to plaintiff's prison trust  
2 account. These payments will be forwarded by the appropriate agency to the Clerk of the Court  
3 each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28  
4 U.S.C. § 1915(b)(2).

5           The complaint states a potentially cognizable claim for relief pursuant to 42  
6 U.S.C. § 1983 and 28 U.S.C. § 1915A(b) as to all defendants except for defendant "the Regents  
7 at the University of California at San Francisco Medical Center ('UCSF Regents')." If the  
8 allegations of the complaint are proven, plaintiff has a reasonable opportunity to prevail on the  
9 merits of this action as to all defendants except for UCSF Regents.

10           As to defendant UCSF Regents, against whom plaintiff seeks money damages  
11 only, under the Eleventh Amendment, the State of California and its official arms are immune  
12 from suit under 42 U.S.C. § 1983 in federal court. See Howlett v. Rose, 496 U.S. 356, 365  
13 (1990). Defendant UCSF Regents is an instrumentality of the State of California for Eleventh  
14 Amendment purposes. Jackson v. Hayakawa, 682 F.2d 1344, 1350 (9th Cir.1982); Mitchell v.  
15 L.A. Cmty. Coll. Dist., 861 F.2d 198, 201 (9th Cir.1988). Accordingly, because the pleading  
16 defects against this defendant cannot be cured, the undersigned recommends that the claims  
17 against this defendant be dismissed.

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

- 19           1. Plaintiff's request for leave to proceed in forma pauperis is granted.
- 20           2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

21 Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.  
22 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the  
23 Director of the California Department of Corrections and Rehabilitation filed concurrently  
24 herewith.

25           3. Service is appropriate for the following defendants: Pletcher, Osman, Hall,  
26 Jolly, Mehta, Sabin, Warhover, Al-Mufti, Long, Dunlap, and Cate.

1           4. The Clerk of the Court shall send plaintiff 11 USM-285 forms, one summons,  
2 an instruction sheet and a copy of the complaint filed March 30, 2011.

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

- 5                   a. The completed Notice of Submission of Documents;
- 6                   b. One completed summons;
- 7                   c. One completed USM-285 form for each defendant listed in number 3
- 8                   above; and
- 9                   d. Twelve copies of the endorsed complaint filed March 30, 2011.

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

14           7. The Clerk of the Court is directed to assign a district judge to this action; and

15           IT IS HEREBY RECOMMENDED that the claims against defendant UCSF  
16 Regents be dismissed.

17           These findings and recommendations are submitted to the United States District  
18 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-  
19 one days after being served with these findings and recommendations, plaintiff may file written  
20 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
21 Findings and Recommendations." Plaintiff is advised that failure to file objections within the  
22 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
23 F.2d 1153 (9th Cir. 1991).

24 DATED: May 16, 2011

25   
KENDALL J. NEWMAN  
26 UNITED STATES MAGISTRATE JUDGE

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

RAYMOND D. JACKSON, SR.,

Plaintiff,

No. 2: 11-cv-1157 KJN P

vs.

STEVEN PLETCHER, et al.,

NOTICE OF SUBMISSION

Defendants.

OF DOCUMENTS

\_\_\_\_\_ /

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

\_\_\_\_\_ completed summons form

\_\_\_\_\_ completed USM-285 forms

\_\_\_\_\_ copies of the \_\_\_\_\_

Complaint/Amended Complaint

DATED:

\_\_\_\_\_  
Plaintiff