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

DEXTER BROWN,

Plaintiff,

No. 2:11-cv-2128 JFM (PC)

vs.

CORRECTIONAL SERGEANT
SWAN, D, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 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).

Plaintiff has moved for reconsideration of this court’s August 23, 2011 order declining to order service of process on the California Department of Corrections and Rehabilitation (CDCR). In that order, the court found that the CDCR was entitled to immunity from suit under the Eleventh Amendment. In his motion for reconsideration, plaintiff contends correctly that the Eleventh Amendment does not apply to claims under the Americans with Disabilities Act (ADA) brought against state agencies. See Duffy v. Riveland, 98 F.3d 447, 452 (9th Cir. 1996) (In ADA, Congress expressly abrogated Eleventh Amendment immunity). Accordingly, plaintiff’s motion for reconsideration will be granted.

1 The court finds that plaintiff's complaint states a cognizable claim for relief
2 against the CDCR pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the allegations of
3 the complaint are proven, plaintiff has a reasonable opportunity to prevail on the merits of that
4 claim. Plaintiff will be directed to complete and return the forms necessary for service of process
5 on said defendant.

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

7 1. Plaintiff's November 14, 2011 motion for reconsideration is granted.

8 2. Service is appropriate for the following defendant: California Department of
9 Corrections and Rehabilitation.

10 3. The Clerk of the Court shall send plaintiff one USM-285 forms, one summons,
11 an instruction sheet and a copy of the complaint filed August 11, 2011.

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

14 a. The completed Notice of Submission of Documents;

15 b. One completed summons;

16 c. One completed USM-285 form for the defendant listed in number 2
17 above; and

18 d. Two copies of the endorsed complaint filed August 11, 2011.

19 5. Plaintiff need not attempt service on defendant and need not request waiver of
20 service. Upon receipt of the above-described documents, the court will direct the United States

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1 Marshal to serve the above-named defendant pursuant to Federal Rule of Civil Procedure 4
2 without payment of costs.

3 DATED: December 15, 2011.

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6 UNITED STATES MAGISTRATE JUDGE

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No. 2:11-cv-2128 JFM (PC)

vs.

CORRECTIONAL SERGEANT SWAN, D,
et al.,

Defendants.

NOTICE OF SUBMISSION
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

DATED:

Plaintiff