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

PAUL SAMUEL JOHNSON,

Plaintiff,

No. CIV S-11-2749 MCE CKD P

vs.

MATTHEW CATE, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se. He seeks relief pursuant to 42 U.S.C. § 1983. The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

The court has reviewed plaintiff’s complaint and determined that it states a cognizable claim for relief pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b) against defendant Mead for violations of the First and Eighth Amendments. If the allegations of the complaint are proven, plaintiff has a reasonable opportunity to prevail on the merits of these

1 claims. With respect to all of the other defendants identified in plaintiff's complaint, plaintiff's
2 complaint fails to state a claim upon which relief can be granted. Therefore, the court will
3 recommend that those defendants be dismissed.

4 Plaintiff has requested the appointment of counsel. The United States Supreme
5 Court has ruled that district courts lack authority to require counsel to represent indigent
6 prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In
7 certain exceptional circumstances, the court may request the voluntary assistance of counsel
8 pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991);
9 Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court
10 does not find the required exceptional circumstances. Plaintiff's request for the appointment of
11 counsel will therefore be denied.

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

13 1. Service is appropriate for defendant Mead.

14 2. The Clerk of the Court shall send plaintiff a USM-285 form, summons, an
15 instruction sheet and a copy of the complaint filed October 18, 2011.

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

18 a. The completed Notice of Submission of Documents;

19 b. One completed summons;

20 c. One completed USM-285 form; and

21 d. Two copies of the endorsed complaint filed October 18, 2011.

22 4. Plaintiff need not attempt service on defendant Mead and need not request
23 waiver of service. Upon receipt of the above-described documents, the court will direct the
24 United States Marshal to serve defendant Mead pursuant to Federal Rule of Civil Procedure 4
25 without payment of costs.

26 5. Plaintiff's February 2, 2012 motion for the appointment of counsel is denied.

1 IT IS HEREBY RECOMMENDED that defendants Cate, Hill, Viale, Stocker and
2 Ohyenelce be dismissed.

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

10 Dated: February 17, 2012

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12 CAROLYN K. DELANEY
13 UNITED STATES MAGISTRATE JUDGE

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

PAUL SAMUEL JOHNSON,

Plaintiff,

No. CIV-S-11-2749 MCE CKD P

vs.

MATTHEW CATE, 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