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

10 JOSHUA DANIEL MILLS,

11 Plaintiff,

No. 2:12-cv-0166 KJM GGH P

12 vs.

13 TIM VIRGA, et al.,

14 Defendants.

ORDER

15 \_\_\_\_\_/  
16 Plaintiff is a state prisoner proceeding with retained counsel with a civil rights  
17 action pursuant to 42 U.S.C. § 1983. Plaintiff paid the filing fee and filed an amended complaint  
18 on February 28, 2012. The amended complaint was screened and it was found that plaintiff had  
19 stated a cognizable Eighth Amendment claim against defendants Murray and Holloway with  
20 respect to the sunglasses claim. It was recommended that other claims and defendants be  
21 dismissed without leave to amend<sup>1</sup> and some claims were dismissed with leave to amend.  
22 Regarding the claims that were dismissed with leave to amend, plaintiff has notified the court  
23 that no second amended complaint will be filed and the case should continue solely against  
24 Murray and Holloway and the Eighth Amendment claim. Doc. 11.

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26 <sup>1</sup> The findings and recommendations recommending dismissal without leave to amend are  
pending before the District Judge assigned to this case, though no objections were filed. Doc. 10.

1           Therefore, as plaintiff's complaint may state a cognizable claim for relief pursuant  
2 to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b) against defendants Murray and Holloway, the  
3 Clerk of the Court will be directed to issue the appropriate number of summonses to plaintiff for  
4 purposes of service of process. See Federal Rule of Civil Procedure 4.

5           Plaintiff shall complete service of process in accordance with Federal Rule of  
6 Civil Procedure 4 within sixty days from the date of this order. Plaintiff shall serve a copy of this  
7 order on each defendant together with a summons and a copy of the complaint. Within 120 days  
8 from the date of this order, plaintiff and defendants shall each submit to the court and serve by  
9 mail on all other parties the following status report:

- 10           1. Whether this matter is ready for trial and, if not, why not;
- 11           2. Whether additional discovery is deemed necessary. If further discovery is  
12 deemed necessary, the party desiring it shall state the nature and scope of the discovery and  
13 provide an estimate of the time needed in which to complete it;
- 14           3. Whether a pretrial motion is contemplated. If any such motion is  
15 contemplated, the party intending to file it shall describe the type of motion and shall state the  
16 time needed to file the motion and to complete the time schedule set forth in Local Rule 230(l);
- 17           4. A narrative statement of the facts that will be offered by oral or documentary  
18 evidence at trial;
- 19           5. A list of all exhibits to be offered into evidence at the trial of the case;
- 20           6. A list of the names and addresses of all witnesses the party intends to call;
- 21           7. A summary of the anticipated testimony of any witnesses who are presently  
22 incarcerated;
- 23           8. The time estimated for trial;
- 24           9. Whether either party still requests trial by jury; and
- 25           10. Any other matter, not covered above, which the party desires to call to the  
26 attention of the court.

1 In addition, plaintiff shall inform the court in his status report of the date and  
2 manner of service of process.

3 The parties are informed that they may, if all consent, have this case tried by a  
4 United States Magistrate Judge while preserving their right to appeal to the Circuit Court of  
5 Appeals. An appropriate form for consent to trial by a magistrate judge is attached. Any party  
6 choosing to consent may complete the form and return it to the clerk of this court. Neither the  
7 magistrate judge nor the district judge handling the case will be notified of the filing of a consent  
8 form unless all parties to the action have consented.

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

10 1. The Clerk of the Court is directed to issue and send plaintiff two summonses,  
11 for defendants Murray and Holloway. The Clerk shall also send plaintiff three copies of the form  
12 Consent to Proceed Before United States Magistrate Judge with this order.

13 2. Plaintiff shall complete service of process on the defendants within sixty days  
14 from the date of this order. Plaintiff shall serve a copy of this order and a copy of the form  
15 Consent to Proceed Before United States Magistrate Judge on each defendant at the time the  
16 summons and complaint are served.

17 3. Defendants shall reply to the complaint within the time provided in Fed. R.  
18 Civ. P. 12(a).

19 4. Plaintiff's status report shall be filed within ninety days from the date of this  
20 order. Defendants' status report shall be filed within thirty days thereafter. The parties are  
21 advised that failure to file a status report in accordance with this order may result in the  
22 imposition of sanctions, including dismissal of the action and preclusion of issues or witnesses.

23 5. Unless otherwise ordered, all motions to dismiss, motions for summary  
24 judgment, motions concerning discovery, motions pursuant to Fed. R. Civ. P. 7, 11, 12, 15, 41,  
25 55, 56, 59 and 60, and E.D. Cal. R. 110, shall be briefed pursuant to L.R. 230(l). Failure to  
26 timely oppose such a motion may be deemed a waiver of opposition to the motion. See L.R.

1 230(l). Opposition to all other motions need be filed only as directed by the court.

2 6. The failure of any party to comply with this order, the Federal Rules of Civil  
3 Procedure, or the Local Rules of Court, may result in the imposition of sanctions including, but  
4 not limited to, dismissal of the action or entry of default. See Fed. R. Civ. P. 41(b).

5 DATED: June 13, 2012

6 /s/ Gregory G. Hollows  
7 UNITED STATES MAGISTRATE JUDGE

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