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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY GOODS,
Plaintiff,
v.
JEFFERY MCCUMBER, et al.,
Defendants.

No. 2:14-cv-2580 TLN KJN P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding pro se and in forma pauperis, with an action filed pursuant to 42 U.S.C. § 1983. Plaintiff's second amended complaint is now before the court. Plaintiff alleges that defendants interfered with his access to the court by denying him the ability to photocopy his habeas petition which exceeded fifty pages in length.

As plaintiff was previously informed, 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).

On December 11, 2015, plaintiff was granted leave to provide documents for service of process on defendants Bradford, Dennehy, Hamad, Kemp, and Triche, or to attempt to amend his pleading to state a cognizable claim against defendant McCumber. In his second amended complaint, plaintiff re-pled his claims against defendants Bradford, Dennehy, Hamad, Kemp, and Triche, but did not attempt to state a cognizable claim against defendant McCumber. Rather,

1 plaintiff named three new individuals as defendants: former warden Tim Virga, D. Green, and B.
2 Arent.

3 Plaintiff was not granted leave to name new defendants in this 2014 case. Moreover, this
4 action was filed on November 4, 2014, and actions taken by Green¹ and Arent, alleged to have
5 occurred after November 17, 2014, could not have been exhausted through administrative
6 grievances prior to the filing of this action. Also, defendant Virga's sole involvement was
7 addressing plaintiff's administrative appeals on July 13, and December 6, 2013. (ECF No. 22 at
8 6.) For all of these reasons, the undersigned recommends that plaintiff's claims against Virga,
9 Green and Arent be dismissed without prejudice.

10 The second amended complaint states potentially cognizable First Amendment claims for
11 relief against defendants Bradford, Dennehy, Hamad, Kemp, and Triche pursuant to 42 U.S.C.
12 § 1983 and 28 U.S.C. § 1915A(b). If the allegations of the amended complaint are proven,
13 plaintiff has a reasonable opportunity to prevail on the merits of this action.²

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

- 15 1. Service is appropriate for the following defendants: Bradford, Dennehy, Hamad,
16 Kemp, and Triche.
- 17 2. The Clerk of the Court shall send plaintiff five USM-285 forms, one summons, an
18 instruction sheet and a copy of the amended complaint (ECF No. 22).
- 19 3. Within thirty days from the date of this order, plaintiff shall complete the attached
20 Notice of Submission of Documents and submit the following documents to the court:

- 21 a. The completed Notice of Submission of Documents;
- 22 b. One completed summons;

23
24 ¹ Also, in response to the recommendation that plaintiff's motion for injunctive relief be granted,
25 defendants, by general appearance, provided evidence that D. Greene approved various requests
26 for photocopies of plaintiff's petition for writ of habeas corpus: on February 10, 2015; November
18, 2014; November 4, 2014; October 31, 2014; and October 24, 2014. (ECF No. 15 at 5.)

27 ² Since the filing of plaintiff's amended pleading, plaintiff's federal habeas petition was
28 dismissed as barred by the statute of limitations. Goods v. McCumber, No. 2:16-cv-0914 JGB
(SK) (C.D. Cal. Jan. 20, 2017).

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- c. One completed USM-285 form for each defendant listed in number 1 above;
 - and
 - d. Six copies of the endorsed amended complaint. (ECF No. 22.)
4. Plaintiff need not attempt service on defendants and need not request waiver of service. Upon receipt of the above-described documents, the court will direct the United States Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4 without payment of costs.

IT IS HEREBY RECOMMENDED that plaintiff's claims against Virga, Green and Arent be dismissed without prejudice.

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

Dated: March 22, 2017

/good2580.1amd


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
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Defendant.

No. 2:14-cv-2580 TLN KJN P

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 _____
Amended Complaint

DATED:

Plaintiff