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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 RICHARD HART,

12 Plaintiff,

13 v.

14 KIMBERLYN YOUNG, et al,

15 Defendants.
16

No. 2:14-cv-2732 CKD (TEMP) P

ORDER &

FINDINGS AND RECOMMENDATIONS

17 Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C.
18 § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This
19 proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

20 Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C.
21 § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

22 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C.
23 §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in
24 accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct
25 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and
26 forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments
27 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.
28 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
2 § 1915(b)(2).

3 The complaint states potentially-cognizable claims for relief pursuant to 42 U.S.C. § 1983
4 and 28 U.S.C. § 1915A(b) against Associate Warden Kimberlyn Young and S. Cervantes. If the
5 allegations of the complaint are proven, plaintiff has a reasonable opportunity to prevail on the
6 merits of this action. However, plaintiff has failed to plead any allegations regarding Warden
7 Swarthout's involvement in the alleged civil rights violations. Accordingly, the complaint fails to
8 state a claim against Warden G. Swarthout, and he should therefore be dismissed from this action.

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

10 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

11 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
12 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
13 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
14 Director of the California Department of Corrections and Rehabilitation filed concurrently
15 herewith.

16 3. Service is appropriate for the following defendants: Associate Warden Kimberlyn
17 Young and S. Cervantes.

18 4. The Clerk of the Court shall send plaintiff two USM-285 forms, one summons, an
19 instruction sheet and a copy of the complaint filed November 20, 2014.

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

22 a. The completed Notice of Submission of Documents;

23 b. One completed summons;

24 c. One completed USM-285 form for each defendant listed in number 3 above;

25 and

26 d. Three copies of the endorsed complaint filed November 20, 2014.

27 6. Plaintiff need not attempt service on defendants and need not request waiver of service.

28 Upon receipt of the above-described documents, the court will direct the United States Marshal to


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

3 7. The Clerk of the Court shall appoint a district judge in this action.

4 IT IS HEREBY RECOMMENDED that Warden Swarthout be dismissed from this action.

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

13 Dated: December 18, 2015

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15 CAROLYN K. DELANEY
16 UNITED STATES MAGISTRATE JUDGE

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ORDER

Plaintiff 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