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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMAAL THOMAS,
Plaintiff,
v.
CHAD DARLING, et al.,
Defendants.

No. 2:16-cv-2691 JAM CKD P

ORDER and FINDINGS &
RECOMMENDATIONS

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

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

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect twenty percent of the preceding month’s income credited to plaintiff’s prison trust account and forward it to the Clerk of the Court each time the amount in plaintiff’s account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

Plaintiff alleges that, on September 24, 2016, he experienced a dizzy spell due to a heart condition which was known to defendants. He alleges that defendant Darling “blindsided” him

1 and then pepper sprayed him without cause, while defendants Pizzaro, Camp, and Haring were
2 present. Plaintiff further alleges that these defendants knew he required medical attention for
3 chest pain and dizziness, but ignored his requests for medical help. Defendant Jordan was the
4 nurse who allegedly delayed plaintiff's treatment for four hours.

5 Plaintiff's complaint states cognizable claims under the Eighth Amendment, 42 U.S.C. §
6 1983 and 28 U.S.C. § 1915A(b), against the four correctional officer defendants: Darling,
7 Pizzaro, Camp, and Haring. Therefore, the court will order that plaintiff provide information to
8 the court so that these defendants can be served with process.

9 The complaint fails to state a federal claim against defendant Jordan. At most, plaintiff's
10 allegations as to this defendant amount to negligence, which is not actionable under § 1983. As it
11 appears amendment as to this defendant would be futile, the undersigned will recommend that
12 this defendant be dismissed with prejudice.

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

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

15 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
16 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
17 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
18 Director of the California Department of Corrections and Rehabilitation filed concurrently
19 herewith.

20 3. Service is appropriate for the following defendants: Darling, Pizzaro, Camp, and
21 Haring.

22 4. The Clerk of the Court shall send plaintiff four USM-285 forms, one summons, an
23 instruction sheet and a copy of the complaint.

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

- 26 a. The completed Notice of Submission of Documents;
- 27 b. One completed summons;
- 28 c. One completed USM-285 form for each defendant listed in number 3 above;

1 and

2 d. Four copies of the complaint.

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

4 Upon receipt of the above-described documents, the court will direct the United States Marshal to
5 serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4 without payment
6 of costs.

7 IT IS HEREBY RECOMMENDED that defendant Jordan be dismissed from this action
8 with prejudice.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations, plaintiff may file written objections
12 with the court. The document should be captioned "Objections to Magistrate Judge's Findings
13 and Recommendations." Plaintiff is advised that failure to file objections within the specified
14 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
15 (9th Cir. 1991).

16 Dated: February 28, 2017



17 CAROLYN K. DELANEY
18 UNITED STATES MAGISTRATE JUDGE

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NOTICE OF SUBMISSION OF
DOCUMENTS

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