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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CURTIS LEE MORRISON,
Plaintiff,
v.
J. FALCON, et al.,
Defendants.

No. 2:17-cv-1044 JAM CKD P

ORDER AND
FINDINGS AND 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).

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

1 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
2 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
3 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

4 The court has conducted the required screening and finds that plaintiff may proceed upon
5 a claim arising under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12131 et
6 seq. against defendant J. Falcon, Superintendent of the California Prison Authority Laundry at
7 California State Prison, Solano, sued in his official capacity. Accordingly, the court will direct
8 plaintiff to provide the court with the necessary forms for service of process upon defendant
9 Falcon.

10 The court will not order service on the other defendants. First, there is no individual
11 liability under the ADA as violations are committed by “entities.” 42 U.S.C. § 12132. See
12 McDaniel v. U.S., No. 2:14-cv-2213 TLN EFB PS, 2015 WL 7459791, *4 (E.D. Cal. Nov. 24,
13 2015). Second, since a suit against a state officer is essentially a suit against the state, Will v.
14 Mich. Dept. of State Police, 491 U.S. 58, 71 (1989) plaintiff’s proceeding against any other
15 defendant in their official capacity would be redundant.

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

- 17 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 3 & 4) is granted.
- 18 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
19 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
20 § 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to the
21 California Department of Corrections and Rehabilitation filed concurrently herewith.
- 22 3. Service is appropriate for defendant Falcon.
- 23 4. The Clerk of the Court shall send plaintiff a USM-285 form, summons, an instruction
24 sheet and a copy of the complaint.

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

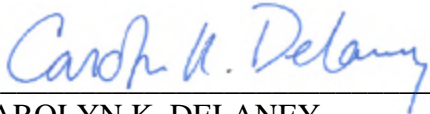
- 3 a. The completed Notice of Submission of Documents;
4 b. One completed summons;
5 c. One completed USM-285 form; and
6 d. Two copies of the complaint.

7 6. Plaintiff need not attempt service on defendant Falcon and need not request waiver of
8 service. Upon receipt of the above-described documents, the court will direct the United States
9 Marshal to serve defendant Falcon pursuant to Federal Rule of Civil Procedure 4 without
10 payment of costs.

11 IT IS HEREBY RECOMMENDED that defendants Aston, Guerrero and Munoz be
12 dismissed.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
15 after being served with these findings and recommendations, plaintiff may file written objections
16 with the court. The document should be captioned “Objections to Magistrate Judge’s Findings
17 and Recommendations.” Plaintiff is advised that failure to file objections within the specified
18 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153
19 (9th Cir. 1991).

20 Dated: October 23, 2017

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23 CAROLYN K. DELANEY
24 UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CURTIS LEE MORRISON,
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No. 2:17-cv-1044 JAM CKD P

NOTICE OF SUBMISSION
OF DOCUMENTS

Plaintiff submits the following documents in compliance with the court's order filed

- _____:
- _____ completed summons form
 - _____ completed USM-285 form
 - _____ copies of the _____
Complaint

DATED:

Plaintiff