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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES C. MCCURDY,

 Plaintiff,

 v.

SECRETARY, CALIFORNIA
DEPARTMENT OF CORRECTIONS
AND REHABILITATION, et al.,

 Defendants.

No. 2:17-cv-1736 GEB 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).

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1 The court is required to screen complaints brought by prisoners seeking relief against a
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
3 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

6 The court has conducted the required screening and finds that plaintiff may proceed on
7 claims for damages arising under the Eighth Amendment for excessive force and denial of
8 medical against defendant Thomas as detailed in paragraphs 12 and 15 of plaintiff’s complaint.
9 With respect to the other defendants identified in plaintiff’s complaint, plaintiff fails to state a
10 claim upon which relief can be granted.¹ Accordingly, the court will recommend that all other
11 defendants be dismissed.

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

13 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 2) is granted.

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

18 3. Service is appropriate for defendant Thomas.

19 4. The Clerk of the Court shall send plaintiff a USM-285 form, summons, an instruction
20 sheet and a copy of the complaint.

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25 ¹ Plaintiff identifies California Medical Facility Warden Robert Fox, Lt. E. Littlepage, Sgt. D.
26 Arestad and California Department of Corrections and Rehabilitation Secretary Scott Kernan as
27 defendants presumably in their capacity as supervisors. However, plaintiff fails to point to any
28 facts suggesting any of these defendants had any personal involvement in any alleged violation of
plaintiff’s federal rights. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (“liability under
section 1983 arises only upon a showing of personal participation by the defendant (citation
omitted) . . . [t]here is no respondeat superior liability under section 1983.”)

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 Thomas 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 Thomas pursuant to Federal Rule of Civil Procedure 4 without
10 payment of costs.

11 IT IS HEREBY RECOMMENDED that all defendants other than defendant Thomas 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, any party may file written
16 objections with the court and serve a copy on all parties. Such a document should be captioned
17 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
18 objections shall be served and filed within fourteen days after service of the objections. The
19 parties are advised that failure to file objections within the specified time may waive the right to
20 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 Dated: January 24, 2018

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24 CAROLYN K. DELANEY
25 UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES MCCURDY,

Plaintiff,

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SECRETARY, CALIFORNIA
DEPARTMENT OF CORRECTIONS
AND REHABILITATION, et al.,

Defendants.

No. 2:17-cv-1736 GEB 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 forms
 - _____ copies of the _____
Complaint

DATED:

Plaintiff