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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PETER J. REED,
Plaintiff,
v.
D. LEATHERMAN, et al.,
Defendants.

No. 2:18-cv-0038 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) and plaintiff has consented to have all matters in this action before a United States Magistrate Judge. See 28 U.S.C. § 636(c).

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).

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 arising under the Eighth Amendment against defendants Leatherman, Shearer, Roberts,
8 Dennis and Vitale. As for defendant Warden Baughman, plaintiff fails to state a claim upon
9 which relief can be granted as plaintiff fails to point to facts indicating Baughman personally
10 participated in any civil rights violations against plaintiff nor otherwise cause such violations.
11 See Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978).

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

13 1. Plaintiff’s request for leave to proceed in forma pauperis 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 defendants Leatherman, Shearer, Roberts, Dennis and Vitale.

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

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

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

26 and

- 27 d. Six copies of the complaint.

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6. 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.

7. The Clerk of the Court assign a district court judge to this case.

IT IS HEREBY RECOMMENDED that defendant Baughman be dismissed from this action.

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 after being served with these findings and recommendations, plaintiff may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time waives the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: April 24, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PETER J. REED,

Plaintiff,

v.

D. LEATHERMAN, et al.,

Defendants.

No. 2:18-cv-0038 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