

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JON HUMES,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

No. 2:18-cv-0244 CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff is a Sacramento County Jail prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. Since plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request 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 the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency 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 After having conducted the required screening, the court finds that plaintiff may proceed
7 on a claim arising under the Due Process Clause of the Fourteenth Amendment for injunctive
8 relief against Xavier Becerra, in his official capacity as the Attorney General of the State of
9 California, regarding plaintiff’s claim that he is wrongfully listed on a sex offender registry.
10 Accordingly, the court will order plaintiff to provide the court with information so that process
11 may be served on defendant Becerra.

12 In all other respects, the complaint fails to state a claim upon which relief can be granted.
13 With respect to any claim for monetary damages, plaintiff fails to allege any defendant was
14 actually involved in any violation of his civil rights. See Taylor v. List, 880 F.2d 1040, 1045 (9th
15 Cir. 1989) (liability under section 1983 arises only upon a showing of personal participation by
16 the defendant). As for defendant the State of California and the “Sex + Arson Registry” which
17 plaintiff identifies as a division of the California Department of Justice, the Eleventh Amendment
18 serves as a jurisdictional bar to suits brought by private parties against states and state agencies.
19 Alabama v. Pugh, 438 U.S. 781 (1978) (per curiam).

20 Finally, the court notes that plaintiff has filed a motion asking that the court waive the
21 filing fee for this case and provide plaintiff with \$500 per month to “facilitate discovery and other
22 advances.” Both requests will be denied as prisoners are required to pay filing fees in full for
23 civil actions they file, see 28 U.S.C. § 1915(b)(1), and the court generally has no authority to
24 provide funds to pro se litigants for discovery or other litigation expenses.

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

- 26 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 2, 4) is granted.
- 27 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
28 shall be collected and paid in accordance with this court’s order to the Sacramento County Sheriff

1 filed concurrently herewith.

2 3. Service is appropriate for defendant Becerra in his official capacity as the Attorney
3 General of the State of California.

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

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

- 8 a. The completed Notice of Submission of Documents;
- 9 b. One completed summons;
- 10 c. One completed USM-285 form; and
- 11 d. Two copies of the complaint.

12 6. Plaintiff need not attempt service on defendant and need not request waiver of service.
13 Upon receipt of the above-described documents, the court will direct the United States Marshal to
14 serve the above-named defendant pursuant to Federal Rule of Civil Procedure 4 without payment
15 of costs.

16 7. Plaintiff's "motion to dismiss filing fees" (ECF No. 5) is denied.

17 8. Plaintiff's "motion for funds" (ECF No. 6) is denied.

18 9. The Clerk of the Court is directed to assign a district court judge to this case.

19 IT IS HEREBY RECOMMENDED that:

20 1. All defendants other than defendant Becerra in his official capacity as the Attorney
21 General of the State of California be dismissed; and

22 2. All claims other than plaintiff's claim arising under the Due Process Clause of the
23 Fourteenth Amendment for injunctive relief be dismissed.

24 These findings and recommendations are submitted to the United States District Judge
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen after
26 being served with these findings and recommendations, plaintiff may file written objections with
27 the court. The document should be captioned "Objections to Magistrate Judge's Findings and
28 Recommendations." Plaintiff is advised that failure to file objections within the specified time

1 waives the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
2 1991).

3 Dated: April 13, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
hume0244.1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JON HUMES,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

No. 2:18-cv-0244 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