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8 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

9 ROBERT MITCHELL,

10 Plaintiff,

11 v.

12 T. FELKER, et al.,

13 Defendants.

CASE NO. C08-1196 RAJ

ORDER

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15 This is the undersigned judge's initial order in this action. This matter was  
16 transferred to the undersigned judge in January 2009 (Dkt. # 7), after it was transferred to  
17 the Chief Judge of the Western District of Washington in November 2008 (Dkt. # 6).  
18 Plaintiff Robert Mitchell has filed a complaint alleging violations of 42 U.S.C. § 1983, 42  
19 U.S.C. § 1985, and California law against Defendants T. Felker, the warden at  
20 High Desert State Prison ("HDSP"), where Mr. Mitchell was previously confined. Also  
21 named as a Defendant is J. Walker, the warden at California State Prison – Sacramento  
22 ("CSP Sacramento"), where Mr. Mitchell is currently confined. Also named are at least  
23 16 other Defendants who are either corrections officers or are otherwise employed by one  
24 of the above mentioned prisons. Currently pending is Mr. Mitchell's application to  
25 proceed in forma pauperis (Dkt. # 2).

26 The court has reviewed Mr. Mitchell's complaint and finds that it states a  
27 cognizable claim for relief. Mr. Mitchell has presented a claim that is not patently

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1 frivolous or malicious, and the court has no basis to conclude at this time that the  
2 complaint fails to state a claim upon which relief may be granted. For that reason, the  
3 court concludes that the complaint should not be dismissed in exercise of the court's  
4 obligation under 28 U.S.C. § 1915A to screen civil complaints from prisoners against  
5 government entities or government officers. In making this finding, the court in no way  
6 suggests that Mr. Mitchell is likely or unlikely to prevail on the merits of his claim.

7         The court has reviewed Mr. Mitchell's application to proceed in forma pauperis  
8 and concludes that it meets the standards set forth in 28 U.S.C. § 1915. Mr. Mitchell has  
9 submitted a declaration and other information necessary to assess his financial status, as  
10 required by 28 U.S.C. § 1915. Having reviewed that information, the court grants Mr.  
11 Mitchell leave to proceed in forma pauperis. Prison officials have certified that, as of  
12 May 2008, both the average monthly deposits in Mr. Mitchell's account and the average  
13 monthly balance in the six months preceding his application were zero or negative. For  
14 that reason, Mr. Mitchell shall not be required to pay an initial filing fee, nor shall the  
15 court issue an order requiring periodic payments from Mr. Mitchell's account. The court  
16 orders Mr. Mitchell to submit a second financial affidavit regarding the status of his  
17 account, including a new certification from prison officials regarding his account balance  
18 and account activity for the six months preceding the certification date. The court will  
19 use this information to determine if an order directing full, partial, or periodic payment of  
20 the \$350 filing fee is necessary.

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

- 22         1. Plaintiff's request for leave to proceed in forma pauperis is granted.
- 23         2. Plaintiff shall, within 30 days of the date of this order, submit a second  
24 financial affidavit and account certification from prison officials as described above, after  
25 which the court will determine if an order directing full, partial, or period payment of the  
26 \$350 filing fee in this action is appropriate.

1           3. Service is at least potentially appropriate for the 18 Defendants listed in Mr.  
2 Mitchell's complaint. To the extent that Mr. Mitchell has full names for any of these  
3 Defendants, he shall so state when he provides the documents described below to the  
4 court.

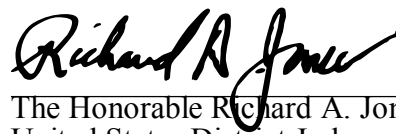
5           4. The Clerk of the Court shall send plaintiff 19 USM-285 forms, one summons,  
6 an instruction sheet and a copy of the complaint filed May 30, 2008.

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

- 10           a. The completed Notice of Submission of Documents;
- 11           b. One completed summons;
- 12           c. One completed USM-285 form for each Defendant listed in number 3 above;
- 13           and
- 14           d. Nineteen copies of the endorsed complaint filed May 30, 2008.

15           6. Plaintiff need not attempt service on Defendants and need not request waiver of  
16 service. Upon receipt of the above-described documents, the court will direct the United  
17 States Marshal to serve the above-named Defendants pursuant to Federal Rule of Civil  
18 Procedure 4 without payment of costs. The court notes that given the large number of  
19 Defendants Mr. Mitchell has sued, the court may decline to order service as to some  
20 Defendants pending a review of whether the complaint adequately states a claim against  
21 each Defendant.

22           DATED this 26th day of May, 2009.

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26           The Honorable Richard A. Jones  
27           United States District Judge