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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TONY ASBERRY,

Plaintiff,

No. 2:09-cv-1494 MCE KJN P

vs.

MATHEW CATE, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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Pursuant to this court’s screening of plaintiff’s original complaint pursuant to 28 U.S.C. § 1915A(a), the court found that the complaint may state cognizable claims against defendants Hernandez and Phelps, but did not state a claim against Cate, Walker, Bauser, O’Brien, or Does 1-10. (See Dkt. Nos. 7, 12.) The court gave plaintiff the option of proceeding on his original complaint or filing an amended complaint that added a cognizable claim against defendants Cate, Walker, Bauser, O’Brien, or Does 1-10. (Dkt. Nos. 7, 12, 15.) Plaintiff has now chosen to proceed on his original complaint against defendants Hernandez and Phelps, effectively choosing to terminate this action against Cate, Walker, Bauser, O’Brien, and Does 1-10. (Dkt. No. 17.)


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1 Accordingly, IT IS HEREBY RECOMMENDED that defendants Cate, Walker,
2 Bauser, O'Brien, and Does 1-10, be dismissed from this action without prejudice.

3 These findings and recommendations are submitted to the United States District
4 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 21 days
5 after being served with these findings and recommendations, plaintiff may file written objections
6 with the court. The document should be captioned "Objections to Magistrate Judge's Findings
7 and Recommendations." Plaintiff is advised that failure to file objections within the specified
8 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
9 (9th Cir. 1991).

10 DATED: March 4, 2011

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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