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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THOMAS HIGHTOWER,

Plaintiff,

v.

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

CASE NO. 1:04-cv-06028-OWW-SMS PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS THAT THIS ACTION
PROCEED ONLY AGAINST DEFENDANTS J.
KLARICH, K. NYGUEN, D. DEERING, S.
WU, AND A. SANTA CRUZ AND THAT
DEFENDANT SCHWARZENEGGER BE
DISMISSED

(Docs. 141 & 144)

30 DAY DEADLINE FOR DEFENDANTS TO
RESPOND TO THIRD AMENDED
COMPLAINT

Plaintiff Thomas Hightower is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 1, 2010, the Magistrate Judge filed a Findings and Recommendations herein, subsequent to screening the Third Amended Complaint (Doc. 144) which was served on the parties and which contained notice to the parties that any objections to the Findings and Recommendations were to be filed within thirty days. Neither side filed any objection(s).

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis.

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1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. the Findings and Recommendations, filed September 1, 2010 (Doc. 144), is adopted
3 in full;
- 4 2. this action is to proceed on Plaintiff's Third Amended Complaint, filed
5 February 23, 2010 (Doc. 141) against:
- 6 a. Defendants Dr. Klarich, Dr. Nyguen, Dr. Deering, Dr. Wu, and
7 Capt. A. Santa Cruz for deliberate indifference to Plaintiff's
8 serious medical needs in violation of the Eighth Amendment; and
- 9 b. Defendant Capt. A. Santa Cruz for retaliating against Plaintiff
10 because Plaintiff engaged in protected First Amendment activities;
- 11 3. all of Plaintiff's claims, other than as found cognizable immediately
12 above, are dismissed for failure to state a claim upon which relief may be
13 granted;
- 14 4. Defendant Governor Schwarzenegger is dismissed from this action with
15 prejudice based on Plaintiff's failure to state any claims upon which relief
16 may be granted against him;
- 17 5. Plaintiff's request for declaratory relief is dismissed with prejudice; and
- 18 6. Defendants J. Klarich, K. Nyguen, D. Deering, S. Wu, and A. Santa Cruz are
19 ordered to file a response to the Third Amended Complaint (Doc. 141) within
20 thirty (30) days of the date of service of this order.

21
22 IT IS SO ORDERED.

23 **Dated:** November 3, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE