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

LIONELL THOLMER,  
  
Plaintiff,  
  
vs.  
  
JAMES A. YATES, et al.,  
  
Defendants.

1:06-cv-01403-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS ACTION  
PROCEED ONLY AGAINST DEFENDANTS  
YATES, ALLISON, MATTINGLY, HUDSON,  
AND CHIEF MEDICAL OFFICER JOHN DOE  
ON PLAINTIFF’S EIGHTH AMENDMENT  
MEDICAL CLAIMS, AND ALL OTHER CLAIMS  
AND DEFENDANTS BE DISMISSED

OBJECTIONS, IF ANY, DUE IN 30 DAYS

Plaintiff Lionell Tholmer (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds on the First Amended Complaint filed by Plaintiff on December 5, 2006. (Doc. 11.) The First Amended Complaint names John Doe (Chief Medical Officer), James A. Yates (Warden), Allison (Correctional Counselor), J. Mattingly (Chief Deputy Warden), C. Hudson (Appeals Coordinator), Tom Maddox (Director of CDCR), Spralding (CCI), Captain Beel, Correctional Officer (“C/O”) Cabral, C/O Jobinger, C/O Martin, C/O Bruce, C/O Diaz, C/O Garcia and Lieutenant J. L. Scott as defendants, and alleges violations of Due Process, First Amendment claims, claims for property deprivation, claims for an inadequate prison inmate appeals process, and violation of his rights to adequate medical care under the Eighth Amendment.

1 The court screened Plaintiff's First Amended Complaint pursuant to 28 U.S.C. § 1915A and  
2 found that it states cognizable claims for relief under section 1983 against defendants Chief Medical  
3 Officer John Doe , James A. Yates, Allison, J. Mattingly, and C. Hudson only, for violation of Plaintiff's  
4 rights to adequate medical care under the Eighth Amendment. Erickson v. Pardus, 127 S.Ct. 2197, 2200  
5 (2007); Alvarez v. Hill, 518 F.3d 1152, 1157-58 (9th Cir. 2008). On January 26, 2009, the court gave  
6 Plaintiff two options, to either file a Second Amended Complaint, or to notify the court that he wishes  
7 to proceed on the claims found cognizable by the court. On March 9, 2009, Plaintiff filed written notice  
8 to the court that he wishes to proceed only on the claims found cognizable by the court. (Doc. 24.)

9 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 10 1. This action proceed only against John Doe (Chief Medical Officer), James A. Yates  
11 (Warden), Allison (Correctional Counselor), J. Mattingly (Chief Deputy Warden), and  
12 C. Hudson (Appeals Coordinator), for violation of Plaintiff's rights to adequate medical  
13 care under the Eighth Amendment;
- 14 2. All remaining claims and defendants be dismissed from this action;
- 15 3. Plaintiff's claims against defendants Tom Maddox (Director of CDCR), Spralding (CCI),  
16 Captain Beel, C/O Cabral, C/O Jobinger, C/O Martin, C/O Bruce, C/O Diaz, C/O Garcia  
17 and Lieutenant J. L. Scott be dismissed from this action based on Plaintiff's failure to  
18 state any claims upon which relief may be granted against them;
- 19 4. Plaintiff's claims for violation of Due Process, for violation of his rights under the First  
20 Amendment, for property deprivation, and for an inadequate prison inmate appeals  
21 process be dismissed based on Plaintiff's failure to state a claim upon which relief may  
22 be granted under section 1983; and
- 23 5. The Clerk be directed to:
  - 24 A. Reflect on the court's docket the dismissal of defendants Maddox, Spralding,  
25 Beel, Cabral, Jobinger, Martin, Bruce, Diaz, Garcia, and Scott;
  - 26 B. Add to the court's docket defendants Allison (Correctional Counselor) and John  
27 Doe (Chief Medical Officer).

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1           These Findings and Recommendations will be submitted to the United States District Judge  
2 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days  
3 after being served with these Findings and Recommendations, Plaintiff may file written objections with  
4 the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and  
5 Recommendations.” Plaintiff is advised that failure to file objections within the specified time may  
6 waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

**Dated: November 11, 2009**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE