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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER I SIMMONS,

Plaintiff,

v.

ANTHONY HEDGPETH, et al.,

Defendants.

CASE NO. 1:07-cv-01058-LJO-SAB (PC)

FINDING AND RECOMMENDATIONS  
RECOMMENDING DISMISSING CERTAIN  
CLAIMS AND DEFENDANTS

(ECF Nos. 47 & 50)

(THIRTY-DAY OBJECTION DEADLINE)

Plaintiff Christopher I. Simmons ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On March 15, 2013, the Court screened Plaintiff's complaint, and found that it states (1) cognizable claims against Defendants Grissom, Keiley, St. Lucia, Ellstrom and Does #1-10 (nurses) for deliberate indifference toward Plaintiff's "heat risk" condition, in violation of the Eighth Amendment; (2) cognizable claims against Defendants Ellstrom, Rients, Saucedo, Akanno and Rufino for deliberate indifference arising from the deprivation of Plaintiff's pain medication, in violation of the Eighth Amendment; and (3) cognizable retaliation claims against Defendant Rients, Akanno, Saucedo, Rufino, and Ellstrom, in violation of the First Amendment. The Court found other claims that were improperly joined. (ECF No. 47.) Plaintiff was ordered to either file an amended complaint or notify the Court of his willingness to proceed only on the claims found to be cognizable. On April 15, 2013, Plaintiff filed a notice stating that he does not wish to amend and is willing to proceed only on his cognizable claims identified by the Court. (ECF No. 50.)

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1 Accordingly, based on Plaintiff's notice, it is HEREBY RECOMMENDED that:

- 2 1. This action shall proceed as one for damages against Defendants Grissom, Keiley,  
3 St. Lucia, Ellstrom, Rients, Saucedo, Akanno, Rufino and Does #1-10 (nurses); and  
4 2. Plaintiff's claims against Defendants Anthony Hedgpeth, Nate Dill, Jr., and Rubles  
5 are dismissed for failure to state a claim.

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

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15 IT IS SO ORDERED.

16 **Dated: April 23, 2013**

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19 UNITED STATES MAGISTRATE JUDGE  
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