

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JIMMY McDONALD, CASE NO. 1:09-cv-00730-OWW-SMS PC

Plaintiff, ORDER DISMISSING CERTAIN CLAIMS AND PARTIES, AND REFERRING MATTER BACK TO MAGISTRATE JUDGE TO INITIATE SERVICE OF PROCESS PROCEEDINGS

J. A. YATES, et al., PROCEEDINGS

Defendants. (Docs. 1, 7, and 15)

Plaintiff Jimmy McDonald, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983. On October 14, 2009, the Magistrate Judge screened Plaintiff's complaint and found that it states an Eighth Amendment claim for damages against Defendants Cano, Clark, Rodriguez, and Roberts, but fails to state any other claims for relief. 28 U.S.C. § 1915A. Plaintiff was ordered to either file an amended complaint or notify the Court of his willingness to proceed only on his cognizable Eighth Amendment claim.

Plaintiff sought numerous extensions of time to file an amended complaint, and on December 9, 2010, the Court granted Plaintiff a final thirty-day extension of time to comply with the order. Plaintiff was warned that if he failed to comply with the order, this action would proceed on the Eighth Amendment claim and the other claims and parties would be dismissed.

More than thirty days have passed and Plaintiff has not filed an amended complaint or otherwise responded to the order. Plaintiff has had more than one year within which to draft and file an amended complaint. The Court has reviewed the Magistrate Judge's screening order and in light

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1 of Plaintiff's failure to file an amended complaint, this action shall proceed at this time on Plaintiff's
2 cognizable Eighth Amendment claim. 28 U.S.C. § 1915A.

3 Accordingly, it is HEREBY ORDERED that:

- 4 1. This action for damages shall proceed on Plaintiff's complaint, filed April 24, 2009,
5 against Defendants Cano, Clark, Rodriguez, and Roberts on Plaintiff's Eighth
6 Amendment claim arising out of the failure to accommodate his medical need for a
7 lower bunk;
- 8 2. Plaintiff's claims for equitable relief are dismissed, with prejudice, for failure to state
9 a claim;
- 10 3. Defendants James A. Yates and Dr. Igbinosa are dismissed from this action based on
11 Plaintiff's failure to state a claim against them; and
- 12 4. This matter is referred back to the Magistrate Judge to initiate service of process
13 proceedings.

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15 IT IS SO ORDERED.

16 Dated: February 2, 2011

17 /s/ Oliver W. Wanger
18 UNITED STATES DISTRICT JUDGE