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 9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE EASTERN DISTRICT OF CALIFORNIA  
 11 FRESNO DIVISION

13 **RAYMOND GUTHREY,**

14 Plaintiff,

15 v.

17 **CALIFORNIA DEPARTMENT OF**  
**CORRECTIONS AND**  
 18 **REHABILITATION, MICHAEL PATE,**  
**JR., and DOES 1 THROUGH 25, Inclusive,**

19 Defendants.

Case No. 1:10-cv-02177-OWW-GSA

**ORDER ON DEFENDANTS' MOTION  
 TO DISMISS**

Date: March 28, 2011  
 Time: 10:00 a.m.  
 Courtroom: 3  
 Judge: The Honorable Oliver W.  
 Wanger  
 Trial Date: Not Set  
 Action Filed: November 19, 2010

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 22 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

23 Defendants California Department of Corrections and Rehabilitation (CDCR or the  
 24 Department) and Michael Pate, Jr.'s Motion to Dismiss came before this Court for hearing on  
 25 March 28, 2011. Shannon Seibert appeared as attorney for Plaintiff Raymond Guthrey, and  
 26 Jeffrey I. Schwarzschild appeared on behalf of Defendants CDCR and Pate.

27 After considering the moving, opposition, and reply papers, arguments of counsel, and all  
 28 other matters presented, and for the reasons set forth in the attached March 29, 2011

1 Memorandum Decision Regarding Motion to Dismiss (Doc. 8), IT IS HEREBY ORDERED  
2 THAT the Motion to Dismiss is GRANTED in part and DENIED in part as follows:

3 1) Plaintiff's first, second, third, and fifth causes of action are DISMISSED, without  
4 prejudice;

5 2) Plaintiff's sixth, seventh, and eighth causes of action are DISMISSED WITH  
6 PREJUDICE;

7 3) Defendant CDCR is DISMISSED WITH PREJUDICE from Plaintiff's fourth cause of  
8 action; and,

9 4) Plaintiff shall submit an amended complaint within 20 days of March 29, 2011;  
10 Defendants shall file a responsive pleading within 30 days of service of any amended complaint.

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12 IT IS SO ORDERED.

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14 DATED: April 12, 2011

/s/ OLIVER W. WANGER  
United States District Judge

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