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

RICHARD ERNEST ANAYA,

Plaintiff

No. CIV S-07-0029 GGH P

vs.

ROSEANNE CAMPBELL, et al.,

Defendants.

ORDER

_____/

Plaintiff is a prison inmate proceeding with appointed counsel with a civil rights action. Plaintiff proceeds with claims under the American with Disabilities Act (ADA), deliberate indifference to serious medical needs, medical malpractice and retaliation. This action is before the undersigned pursuant to both parties consent.

On August 23, 2007, defendants first appeared in this action by filing a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). On December 5, 2007, the court recommended that defendants' motion be denied as to the Eighth Amendment medical claims against Smith. The court ordered the motion granted with leave to amend as to the claims against the other defendants. On May 29, 2008, plaintiff filed an amended complaint naming some of the original defendants and as well as several new defendants. On June 26, 2008, the court ordered the original defendants to answer the amended complaint and ordered service of the new defendants.

1 On August 26, 2008, the original defendants filed an answer to the amended complaint. On
2 November 4, 2008, several of the newly named defendants filed an answer to the amended
3 complaint.

4 On November 10, 2008, the court issued a scheduling order setting the dispositive
5 motion cut-off date for June 19, 2009. On January 22, 2009, the remaining newly named
6 defendants filed an answer to the amended complaint.

7 On February 27, 2009, defendants filed a motion to modify the scheduling order.
8 Defendants requested that the court extend the discovery cut-off and dispositive motion filing
9 dates because new defense counsel had been assigned. On March 13, 2009, the court granted this
10 motion, and re-set the dispositive motion cut-off date to August 19, 2009.

11 On August 17, 2009, defendants filed a 25 page motion for judgment on the
12 pleadings. The grounds of this motion are that plaintiff failed to exhaust his administrative
13 remedies as to all defendants but for Smith and Williams and that several of the claims are not
14 colorable.¹

15 On August 14, 2009, defendants also requested that the court vacate the current
16 deadline for dispositive motions pending resolution of the motion for judgment on the pleadings,
17 and re-set the deadline if necessary following resolution of that motion so that defendants may
18 file a summary judgment motion. The court declined at that time to give defendants another bite
19 at the summary judgment apple.

20 Trial commenced in this case for only one day on Monday, October 25, 2010. It
21 became quite apparent that plaintiff was unable to competently present his case. Despite
22 plaintiff's efforts, he was simply not articulate enough to function coherently in the courtroom.
23 As a result the court declared a mistrial. In weighing various options the court indicated to
24

25 ¹ Separate counsel representing a different defendant filed a motion for summary judgment
26 on August 17, 2009, that was granted and that defendant was dismissed.

1 plaintiff that the court would attempt to find plaintiff counsel, but noted that the court did not
2 have the authority to force an attorney to represent plaintiff. The court also expressed its view
3 that since the determination to mistry the case would benefit plaintiff, defendants would be
4 provided an opportunity to file a motion for summary judgment.

5 Counsel for plaintiff was found and appointed on January 4, 2011. Therefore,
6 defendants will be allowed to file a motion for summary judgment. In addition, at trial plaintiff
7 indicated he wished to dismiss certain claims and defendants and he filed a motion to dismiss
8 another claim on December 6, 2010. Counsel for both parties shall discuss if these claims and
9 defendants shall be dismissed and indicate such to the court.

10 According, IT IS HEREBY ORDERED that:

11 1. Defendants have until 28 days from service of this order to file a motion for
12 summary judgment;

13 2. Plaintiff's motion to dismiss (Doc. 281) is vacated.

14 DATED: January 13, 2010

/s/ Gregory G. Hollows

15 _____
GREGORY G. HOLLOWES
UNITED STATES MAGISTRATE JUDGE

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