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

BILLY PAUL BIRDWELL, II,

Plaintiff,

No. CIV S-10-0719 FCD GGH P

vs.

M. CATES, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

\_\_\_\_\_ /

Plaintiff is a state prisoner who is proceeding pro se and in forma pauperis.

Plaintiff seeks relief pursuant to 42 U.S.C. § 1983.

By prior order the court determined that plaintiff had stated a colorable claim against defendants Cates, Grannis, Subia, Martel, Lackner, Long, Kaplan, Jackson, Barham, Barroga, Baptista, Petersen, Minnick, Rodriguez, Stanford, Alexander, Fletes and Delacruz and the court also dismissed plaintiff’s claims against defendant Vallery, claims under the ADA and claims where it was alleged that inmate Mayfield’s constitutional rights had been violated.

Plaintiff filed an amended complaint.

By concurrent order, the undersigned has ordered that defendants Cates, Grannis, Subia, Martel, Lackner, Long, Kaplan, Jackson, Barham, Barroga, Baptista, Petersen, Minnick, Rodriguez, Stanford, Alexander, Fletes and Delacruz be served. However, the amended

1 complaint, contains no mention of defendant Vallery, no cognizable claims under the ADA and  
2 no allegations against defendants for violating inmate Mayfield's constitutional rights.

3           Accordingly, IT IS HEREBY RECOMMENDED that defendant Vallery, any  
4 ADA claim and any claims regarding the treatment of inmate Mayfield be dismissed from this  
5 action.

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

14 DATED: December 29, 2010

/s/ Gregory G. Hollows

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GREGORY G. HOLLOWES  
UNITED STATES MAGISTRATE JUDGE

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