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

ANTHONY PENTON,

Plaintiff,

No. 2:11-cv-0518 GEB KJN P

vs.

K. DICKINSON, et al.,

Defendants.

ORDER

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Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 5, 2012, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty-one days. Plaintiff filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

1 Accordingly, IT IS HEREBY ORDERED that:

2 1. The findings and recommendations filed July 5, 2012, are adopted in full;

3 2. Defendants' February 27, 2012 motion to dismiss is denied in part and granted  
4 in part as follows:

5 A. Denied as to plaintiff's alleged failure to exhaust administrative  
6 remedies;

7 B. Granted as to plaintiff's access to the courts claim;

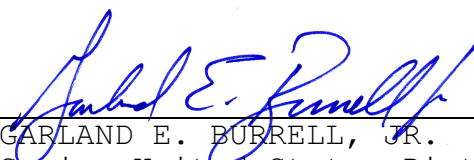
8 C. Granted as to plaintiff's claims for declaratory relief and monetary  
9 damages against defendants in their official capacities;

10 D. Although plaintiff stated a cognizable claim under the First  
11 Amendment based on the withholding of plaintiff's incoming mail for over eight months,  
12 defendants' motion to dismiss is granted based on plaintiff's failure to attribute these actions to a  
13 named defendant, and thus failure to state a claim as to any particular defendant in this case;

14 E. Plaintiff's amended complaint is dismissed with leave to amend as set  
15 forth above; and

16 F. Within sixty days from the date of this order, plaintiff shall file a  
17 second amended complaint that complies with the instant findings and recommendations, the  
18 requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules  
19 of Practice. The second amended complaint must also bear the docket number assigned to this  
20 case and must be labeled "Second Amended Complaint." Failure to file a second amended  
21 complaint in accordance with this order may result in the dismissal of this action.

22 Dated: September 12, 2012

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25 GARLAND E. BURRELL, JR.  
26 Senior United States District Judge