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

WESLEY MITCHELL,

Plaintiff,

No. CIV-S-11-1240 JAM GGH P

vs.

MATTHEW L. CATE, et al.,

Defendants.

ORDER &

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. By order filed September 14, 2011, several defendants in plaintiff's complaint were dismissed with leave to file an amended complaint. Evidently electing not to file an amended complaint, plaintiff, by filing dated September 21, 2011, has informed the court that he elects to proceed only as to the defendants within the original complaint against whom it was determined that colorable claims had been framed.

The complaint states a cognizable claim for relief pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b) as to certain defendants. If the allegations of the complaint as to these defendants are proven, plaintiff has a reasonable opportunity to prevail on the merits of this action. The court will also herein recommend dismissal of the defendants previously dismissed with leave to amend.

1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Service is appropriate for the following defendants: McDonald, Gower,
3 Davey, Van Leer, Sanders, Miranda and Clark.

4 2. The Clerk of the Court shall send plaintiff seven (7) USM-285 forms, one
5 summons, an instruction sheet and a copy of the complaint filed May 9, 2011.

6 3. Within thirty days from the date of this order, plaintiff shall complete the
7 attached Notice of Submission of Documents and submit the following documents to the court:

8 a. The completed Notice of Submission of Documents;

9 b. One completed summons;

10 c. One completed USM-285 form for each defendant listed in number 1
11 above; and

12 d. Eight (8) copies of the endorsed complaint filed May 9, 2011.

13 4. Plaintiff need not attempt service on defendants and need not request waiver of
14 service. Upon receipt of the above-described documents, the court will direct the United States
15 Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4
16 without payment of costs.

17 IT IS RECOMMENDED for the reasons set forth in the Order, filed on September
18 14, 2011 (docket # 9), that defendants Cate, Kernan, Chapman, Harkness and Dangler be
19 dismissed from this action.

20 These findings and recommendations are submitted to the United States District
21 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
22 days after being served with these findings and recommendations, plaintiff may file written
23 objections with the court. Such a document should be captioned "Objections to Magistrate
24 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections

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26 \\\

1 within the specified time may waive the right to appeal the District Court's order. Martinez v.
2 Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: October 17, 2011

4 /s/ Gregory G. Hollows
5 UNITED STATES MAGISTRATE JUDGE

6 GGH:009
7 mitc1240.1+

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

WESLEY MITCHELL,

Plaintiff,

No. CIV-S-11-1240 GGH P

vs.

MATTHEW L. CATE, et al.,

Defendants.

NOTICE OF SUBMISSION

OF DOCUMENTS

_____ /

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

1 completed summons form

7 completed USM-285 forms

8 copies of the May 9, 2011
Complaint

DATED:

Plaintiff