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

TONY ASBERRY,

Plaintiff,

No. 2: 11-cv-2462 KJM KJN P

vs.

MATTHEW CATE, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

_____ /

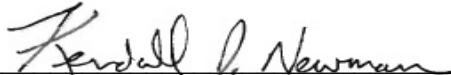
Plaintiff is a state prisoner proceeding without counsel with a civil rights action pursuant to 42 U.S.C. § 1983. The undersigned has separately issued an order addressing the second amended complaint filed December 1, 2011. The undersigned found that the second amended complaint stated a colorable claim for relief against all defendants but for defendant Cate. For the reasons stated in that order, defendant Cate should be dismissed.

Accordingly, IT IS HEREBY RECOMMENDED that defendant Cate be dismissed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days after being served with these findings and recommendations, plaintiff may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's

1 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
2 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951
3 F.2d 1153 (9th Cir. 1991).

4 DATED: January 5, 2012

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7 KENDALL J. NEWMAN
8 UNITED STATES MAGISTRATE JUDGE

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