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

ANTHONY COLEMAN,

Plaintiff,

No. 2:12-cv-1496 CKD P

vs.

MATTHEW CATE, et al.,

Defendants.

ORDER &
FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff is a state prisoner, proceeding pro se and in forma pauperis, who seeks relief pursuant to 42 U.S.C. § 1983. On August 10, 2012, plaintiff’s complaint was found to state an Eighth Amendment claim against defendant Oliver. To give plaintiff a chance to cure the defects of the complaint against the remaining three defendants, the court dismissed the complaint with leave to amend.

On September 4, 2012, plaintiff filed an amended complaint. (Dkt. No. 11.) The court concludes that for screening purposes, plaintiff states an Eighth Amendment claim as to defendants Oliver and Perez. If these allegations of the complaint are proven, plaintiff has a reasonable opportunity to prevail on the merits of this action. Plaintiff does not state a claim as to defendants Cate and Barnes for the reasons set forth in the August 10, 2012 screening order.

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

2 1. The Clerk's office is directed to assign a district judge to this case;

3 2. Service is appropriate for the following defendants: Oliver and Perez.

4 3. The Clerk of the Court shall send plaintiff one USM-285 form, one summons,
5 an instruction sheet and a copy of the amended complaint filed September 4, 2012.

6 4. 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. Two copies of the endorsed amended complaint filed September 4,
13 2012.

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

18 IT IS HEREBY RECOMMENDED THAT the following defendants are
19 dismissed from this action with prejudice: Matthew Cate and Ron Barnes.

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, any party may file written
23 objections with the court and serve a copy on all parties. Such a document should be captioned
24 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
25 shall be served and filed within fourteen days after service of the objections. The parties are

26 \\\

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

3 Dated: November 26, 2012

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5 CAROLYN K. DELANEY
6 UNITED STATES MAGISTRATE JUDGE

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

ANTHONY COLEMAN,

Plaintiff,

No. 2:12-cv-1496 CKD P

vs.

MATTHEW CATE, et al.,

Defendants.

NOTICE OF SUBMISSION
OF DOCUMENTS

_____ /

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

- _____ completed summons form
- _____ completed USM-285 forms
- _____ copies of the _____
Complaint/Amended Complaint

DATED:

Plaintiff