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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BOB SAVAGE,

Plaintiff,

v.

CDCR, et al.,

Defendants.

No. 2:13-cv-0795 JAM CKD P

ORDER and FINDINGS &
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. Defendants have requested an order screening the First Amended Complaint (“FAC”) pursuant to 28 U.S.C. § 1915(A)(b). (ECF No. 37.)

The court previously granted plaintiff’s motion to amend, noting that the FAC is substantially similar to the original complaint, but “corrects the name of one defendant (Barnhart instead of Barnes)[.]” (ECF No. 36.) Service was executed on defendant Barnes, who answered the original complaint. (ECF Nos. 18, 23.) In service documents for Barnes, plaintiff indicated that there were several correctional officers named Barnes at California Medical Facility and he intended to serve “the employee who was assigned as the 2nd Watch housing officer in H-3 on June 28, 2011.” (ECF No. 18 at 4.)

1 The court construed the FAC as “correcting the name” of this defendant, also described in
2 the FAC as the H-3 housing officer working on June 28, 2011. However, defendants by their
3 request indicate that the “Barnes” who was served with the original complaint is not the
4 “Barnhart” named in the FAC, and that the latter has yet to be served. Accordingly, the court will
5 recommend that defendant Barnes be dismissed from this action.¹

6 The court finds that the FAC states a cognizable claim under 42 U.S.C. § 1983 and 28
7 U.S.C. § 1915A(b) as to defendants DiTomas, Hinman-Seabrooks, Bick, and Aguilera (see ECF
8 Nos. 18, 26) and new defendant Barnhart. If the allegations of the amended complaint are
9 proven, plaintiff has a reasonable opportunity to prevail on the merits of this action.

10 Additionally, defendants DiTomas, Hinman-Seabrooks, Bick, and Aguilera request an
11 extension of time to respond to the FAC and modification of the scheduling order. Good cause
12 appearing, the court will grant this request.

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

- 14 1. Service is appropriate for the following additional defendant: Barnhart.
- 15 2. The Clerk of the Court shall send plaintiff one USM-285 forms, one summons, an
16 instruction sheet and a copy of the amended complaint filed May 15, 2014.
- 17 3. Within thirty days from the date of this order, plaintiff shall complete the attached
18 Notice of Submission of Documents and submit the following documents to the court:
 - 19 a. The completed Notice of Submission of Documents;
 - 20 b. One completed summons;
 - 21 c. One completed USM-285 form for each defendant listed in number 1 above;
 - 22 and
 - 23 d. Two copies of the endorsed amended complaint filed May 15, 2014.
- 24 4. Plaintiff need not attempt service on defendant and need not request waiver of service.

25 Upon receipt of the above-described documents, the court will direct the United States Marshal to
26

27 ¹ Per defendants’ request, the court will also recommend that defendant Andreasen be formally
28 dismissed from this action. This defendant has never been served, is not named in the FAC, and
is apparently deceased (see ECF No. 35 at 1).

1 serve the above-named defendant pursuant to Federal Rule of Civil Procedure 4 without payment
2 of costs.

3 5. Defendants' motion for screening and extension of time (ECF No. 37) is granted.

4 6. Defendants DiTomas, Bick, Aguilera, and Hinman-Seabrooks shall have thirty days
5 from the date of this order to respond to the FAC.

6 7. The pretrial and dispositive motion deadlines in the scheduling order are VACATED.
7 Future discovery and motion deadlines will be set as appropriate.

8 IT IS HEREBY RECOMMENDED THAT defendants Barnes and Andreasen be
9 dismissed from this action for the reasons set forth above.

10 These findings and recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
12 after being served with these findings and recommendations, any party may file written
13 objections with the court and serve a copy on all parties. Such a document should be captioned
14 "Objections to Magistrate Judge's Findings and Recommendations." The parties are
15 advised that failure to file objections within the specified time may waive the right to appeal the
16 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 Dated: June 19, 2014

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19 _____
20 CAROLYN K. DELANEY
21 UNITED STATES MAGISTRATE JUDGE

