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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID SEGOVIA,
Plaintiff,
v.
STATE OF CALIFORNIA, et al.,
Defendants.

No. 2:14-cv-0715 CKD P (TEMP)

ORDER AND 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 December 19, 2014, plaintiff’s complaint was dismissed with leave to file an amended complaint. Plaintiff has now filed an amended complaint.

The amended complaint states a cognizable claim under 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). Specifically, plaintiff has adequately alleged deliberate indifference to a serious medical need in violation of the Eighth Amendment against defendants Peters, Convalecer and Moon. If the allegations of the amended complaint are proven, plaintiff has a reasonable opportunity to prevail on the merits of this action. As to the remaining defendants, the undersigned concludes that the first amended complaint does not cure the defects of the original complaint as set forth in the December 19, 2014 screening order. See Daniels-Hall v. National Educ. Ass’n, 629 F.3d 992, 998 (9th Cir. 2010) (while the court must assume plaintiff’s factual

1 allegations are true, it is not required to accept allegations that are “merely conclusory,
2 unwarranted deductions of fact, or unreasonable inferences.”) Thus the undersigned will
3 recommend that all defendants other than Peters, Convalecer, and Moon be dismissed from this
4 action.

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

6 1. Service is appropriate for the following defendants: Peters, Convalecer and Moon.

7 2. The Clerk of the Court shall send plaintiff three USM-285 forms, one summons, an
8 instruction sheet and a copy of the amended complaint filed January 16, 2015.

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

11 a. The completed Notice of Submission of Documents;

12 b. One completed summons;

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

14 and

15 d. Four copies of the endorsed amended complaint filed January 16, 2015.

16 4. Plaintiff need not attempt service on defendants and need not request waiver of service.

17 Upon receipt of the above-described documents, the court will direct the United States Marshal to
18 serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4 without payment
19 of costs.

20 5. The Clerk of the Court is directed to assign a district judge to this action.

21 IT IS HEREBY RECOMMENDED that:

22 1. All defendants other than Peters, Convalecer and Moon be dismissed from this action.

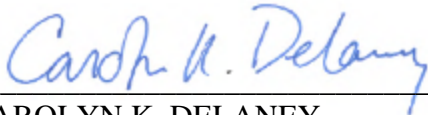
23 These findings and recommendations are submitted to the United States District Judge
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
25 after being served with these findings and recommendations, any party may file written
26 objections with the court and serve a copy on all parties. Such a document should be captioned

27 /////

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1 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
2 within the specified time may waive the right to appeal the District Court’s order. Martinez v.
3 Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 Dated: January 11, 2016



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

v.

Plaintiff,

Defendant.

No.

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

DATED:

Plaintiff