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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT EPPS,  
  
                                Plaintiff,  
  
                                v.  
  
CSP SACRAMENTO, et al.,  
  
                                Defendants.

No. 2:14-cv-1347 MCE AC P  
  
ORDER and  
  
FINDINGS AND RECOMMENDATIONS

I.     Introduction

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with this civil rights action filed pursuant to 42 U.S.C. § 1983. This action proceeds on plaintiff’s First Amended Complaint (FAC), filed July 17, 2014. See ECF No. 24. Presently pending is defendants’ motion to dismiss this action based on plaintiff’s concession on the face of the FAC that he did not exhaust his administrative remedies. See ECF No. 33. Also pending are defendants’ motion to strike plaintiff’s surreplies, ECF No. 43; plaintiff’s motion to compel discovery, ECF No. 32; and plaintiff’s motion for appointment of counsel, ECF No. 42. For the reasons that follow, this court denies plaintiff’s motions to compel and for appointment of counsel; grants in part defendants’ motion to strike; and recommends denial of defendants’ motion to dismiss.

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1           II.     Background

2           By order filed October 24, 2014, this court found upon screening the FAC, pursuant to 28  
3 U.S.C. § 1915A, that the FAC states potentially cognizable Eighth Amendment claims against  
4 California State Prison Sacramento (CSP-SAC) Correctional Officers Deleon and Sakyi and two  
5 unnamed officers. See ECF No. 9 at 4. This finding was based on the following allegations of  
6 the FAC, ECF No. 24 at 3 (sic):

7                     On 10-19-10 I was transported from one unit to the next on a  
8 stretcher when I arrived four officers pulled me out of the stretcher  
9 and started dragging me causing my foot to be cut open. I collapsed  
10 they put me in a wheelchair took me to a cell tied me to a retention  
chain twisted my arm while it was thru the food port leaving a cut  
on it and punching me in the face. All of this happened while my  
pelvis was fractured.

11 Plaintiff noted on the form portion of complaint that he had filed an administrative grievance  
12 related to the facts of this case, but that the process had not been completed.<sup>1</sup> See ECF No. 24 at  
13 2.

14           On March 17, 2015, plaintiff filed a one-page letter addressed to the court which states in  
15 pertinent part, ECF No. 31 at 1:

16                     [A]bout administrative remedies I filed a 602 after I was released  
17 from medical and I never got a response. I sent in a letter trying to  
18 get something and I got a letter that really didn't say much instead  
of (sic) the appeal.

19 The letter also states that plaintiff "sent a letter to the warden at CSP SAC asking for the names of  
20 the two unknown deffendants (sic) and I haven't got a response yet. The letter was sent on 2-12-  
21 15." Id.

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22 <sup>1</sup> Plaintiff made the same notation in his original complaint. See ECF No. 1 at 2. However, the  
23 allegations of plaintiff's original complaint were different. The original complaint named only  
24 "CSP Sacramento," and was entitled "Deliberate Indifference[:] It took medical 72 hours to  
25 diagnose and treat my fractured pelvis." Id. at 1. On screening, the court found, see ECF No. 9 at  
3-4, that the following allegations of the original complaint did not state a cognizable claim, ECF  
No. 1 at 3 (sic):

26                     On 10-17-10 I was involved in an incident. When the COs got  
27 there an inmate was on top of me with his hands around my neck.  
28 The RN in the ER noticed abbrasions (sic) on my left hip. I  
couldn't get up and walk on my own and I kept complaining about  
pain in my pelvis.

1 On April 2, 2015, plaintiff filed another one-page letter which states in pertinent part that  
2 plaintiff wrote to the Office of the California Attorney General (AG), asking for the names of the  
3 two unknown defendants, and was informed that upon proper service of the operative complaint  
4 the AG would review plaintiff's central file and unit health record. ECF No. 32. The Clerk of  
5 Court construed this letter a motion to compel discovery. See id. (docket entry).

6 Thereafter, on April 13, 2015, defendants filed the instant motion to dismiss this action,  
7 see ECF No. 33, and filed an opposition to plaintiff's motion to compel, see ECF No. 34.  
8 Defendants contend that plaintiff's motion to compel discovery was prematurely filed because  
9 discovery has not yet opened in this case, and plaintiff did not serve a formal discovery request  
10 prior to filing the motion. ECF No. 34. Attached to defendants' opposition is a copy of a March  
11 26, 2014 letter from plaintiff to the AG, which asks in full, "Can you please provide the names of  
12 the two unknown deffendants (sic). I've tried in the past but I never got a response." ECF No. 34  
13 at 5.

14 In support of their motion to dismiss, defendants contend that this action is barred by  
15 plaintiff's concession, on the form portion of the FAC, that he failed to exhaust his administrative  
16 grievance despite there being "a grievance procedure available at [his] institution," ECF No. 24 at  
17 2. See ECF No. 33.

18 In opposition to defendants' motion, plaintiff asserts in pertinent part, ECF No. 36 at 1  
19 (sic):

20 In December of 2010 I filed a 602 to K.A. Daly the appeals  
21 coordinator but I never got a respone wich is shown on the face of  
22 the amended complaint. [¶] On papers that I got from the prison  
law office it states when filing a civil lawsuit thus prisoners should  
file a 602 or at least try to wich is what I did.

23 Defendants filed a reply in which they assert that "[p]laintiff apparently asserts the new  
24 claim that administrative remedies were unavailable. But, Plaintiff did not assert this in his  
25 amended complaint. Further, by Plaintiff's own admission, he did not timely submit a  
26 grievance." ECF No. 37 at 1. Defendants further contend that "[e]ven if the Court were to credit  
27 Plaintiff's statements made in his opposition, his failure to properly exhaust remains clear"  
28 because plaintiff untimely submitted his grievance. Id. at 2. Defendants explain, id.:

1 In 2010, inmates were required to submit an appeal within fifteen  
2 working days of the incident being grieved. Cal. Code Regs. tit. 15,  
3 § 3084.6(c) (2009 rev.). Plaintiff's alleged injury occurred on  
4 October 19, 2010. Amd. Compl., ECF No. 24 at 3. Thus, Plaintiff  
5 was required to submit an appeal by November 9, 2010 at the latest.  
6 In his opposition to Defendants' motion, Plaintiff states that he did  
7 not submit a grievance regarding the incident until December 2010.  
8 Opp'n, ECF No. 36 at 1. Accordingly, by any measure, his  
9 grievance was not timely filed.

10 Thereafter, plaintiff filed two letters, appropriately construed by defendants as surreplies,  
11 which defendants move to strike.<sup>2</sup> However, plaintiff's first surreply contains a new argument  
12 relevant to the motion to dismiss which the court has considered. It provides in pertinent part,  
13 ECF No. 40 at 1 (sic):

14 I did timely submit my grievance because I wasn't released from  
15 San Joaquin Hospital until the next week and I was in CSP SAC  
16 CTC [Correctional Treatment Center] for a few weeks after that. I  
17 was also placed in AD-SEG where it takes time to get a pen and  
18 602 and U Save Em envelope to even file the grievance, wich aren't  
19 passed out until Sunday. I turned in the 602 on 12-9-10 it was sent  
20 back to me on 12-15-10 saying that it had to be placed in a U Save  
21 Em envelope to get a log number wich I did and sent it back in.

22 However, plaintiff's second surreply, ECF No. 41, contains no new information and is therefore  
23 disregarded. Therefore, defendants' motion to strike, ECF No. 43, is denied in part and granted in  
24 part.<sup>3</sup>

25 Thereafter, plaintiff filed a third letter, which the Clerk of Court has construed as motion  
26 for appointment of counsel. That letter provides in full, ECF No. 42 (sic):

27 At the time of the incident I was Keheya,<sup>4</sup> EOP, on an injection  
28 every two weeks, on oral medications I hear voices and see things  
and I have auditorial hallussions. None of this has changed I'm  
still on it. I feel like someone should have helped me exhaust my

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23 <sup>2</sup> While the Local Rules provide for a motion, an opposition, and a reply, see E.D. Cal. L. R.  
24 230(b)-(d), neither the Local Rules nor the Federal Rules provide for the filing of a surreply. The  
25 court did not request a surreply in this action, and the filings contain no new arguments essential  
26 to the determination of defendants' motion. Therefore, petitioner's surreply is disregarded.

27 <sup>3</sup> In response to defendants' motion to strike, plaintiff informed the court that he would address  
28 the surreply question "once I make it over to the law library," and that the AG had instructed him  
to "start corresponding with the inspector general." ECF No. 44 at 1.

<sup>4</sup> See Keyhea v. Rushen, 178 Cal. App. 3d 526 (1st Dist. 1986) (authorizing involuntary  
administration of psychotropic medications to prisoners pursuant to appropriate procedural  
protections).

1 administrative remedies. If I have to go trial I don't see myself  
2 going pro per and I would like to be appointed counsel. I've try to  
3 kill myself 4 times and I've been to DSH 4 times. [¶] P.S. I was  
4 just sent to the crisis bed in CMC.

5 Thereafter, plaintiff filed four notices of change of address indicating that he had been  
6 repeatedly transferred among correctional institutions. When plaintiff commenced this action in  
7 June 2014, he was incarcerated at the California Health Care Facility (CHCF) in Stockton. See  
8 ECF No. 1 at 1. Shortly thereafter he was moved to Kern Valley State Prison (KVSP) in Delano.  
9 See ECF Nos. 5, 38. In July 2015, plaintiff notified the court that he had been transferred back to  
10 CHCF, then transferred back to KVSP. See ECF Nos. 45-6. In August and September 2015,  
11 plaintiff informed the court that he was incarcerated that the California Men's Colony (CMC) in  
12 San Luis Obispo. See ECF No. 47-8. However, this court's review of the Inmate Locator  
13 website operated by the California Department of Corrections and Rehabilitation indicates that  
14 plaintiff is currently incarcerated at the CHCF.<sup>5</sup>

### 15 III. Legal Standards for Dismissal for Failure to Exhaust Administrative Remedies

16 The Prison Litigation Reform Act of 1995 (PLRA) mandates that “[n]o action shall be  
17 brought with respect to prison conditions under section 1983 . . . or any other Federal law, by a  
18 prisoner confined in any jail, prison, or other correctional facility until such administrative  
19 remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Although “the PLRA’s  
20 exhaustion requirement applies to all inmate suits about prison life,” Porter v. Nussle, 534 U.S.  
21 516, 532 (2002), the requirement for exhaustion under the PLRA is not absolute. See Albino v.  
22 Baca, 697 F.3d 1023, 1030–31 (9th Cir. 2012). As explicitly stated in the statute, “[t]he PLRA  
23 requires that an inmate exhaust only those administrative remedies ‘as are available.’” Sapp v.  
24 Kimbrell, 623 F.3d 813, 822 (9th Cir. 2010) (quoting 42 U.S.C. § 1997e(a)) (administrative  
25 remedies plainly unavailable if grievance was screened out for improper reasons); see also Nunez  
26 v. Duncan, 591 F.3d 1217, 1224 (9th Cir. 2010) (“Remedies that rational inmates cannot be

27 <sup>5</sup> See <http://inmatelocator.cdcr.ca.gov/search.aspx>. See also Fed. R. Evid. 201 (court may take  
28 judicial notice of facts that are capable of accurate determination by sources whose accuracy  
cannot reasonably be questioned).

1 expected to use are not capable of accomplishing their purposes and so are not available.”). “We  
2 have recognized that the PLRA therefore does not require exhaustion when circumstances render  
3 administrative remedies ‘effectively unavailable.’” Sapp, 623 F.3d at 822 (citing Nunez, 591  
4 F.3d at 1226); accord Brown v. Valoff, 422 F.3d 926, 935 (9th Cir. 2005) (“The obligation to  
5 exhaust ‘available’ remedies persists as long as some remedy remains ‘available.’ Once that is no  
6 longer the case, then there are no ‘remedies . . . available,’ and the prisoner need not further  
7 pursue the grievance.”).

8 Dismissal of a prisoner civil rights action for failure to exhaust administrative remedies  
9 must generally be brought and decided pursuant to a motion for summary judgment under Rule  
10 56, Federal Rules of Civil Procedure. Albino v. Baca, 747 F.3d 1162 (9th Cir. 2014) (en banc).  
11 Defendant bears the burden of proving that there was an available administrative remedy that the  
12 prisoner did not exhaust it. Id. at 1172. If defendant meets this burden, then the burden shifts to  
13 plaintiff to “come forward with evidence showing that there is something in his particular case  
14 that made the existing and generally available administrative remedies effectively unavailable to  
15 him.” Id. In adjudicating summary judgment on the issue of exhaustion, the court must view all  
16 the facts in the record in the light most favorable to plaintiff. Id. at 1173.

17 However, a motion for summary judgment is unnecessary “[i]n the rare event that a failure  
18 to exhaust is clear on the face of the complaint, [when] a defendant may move for dismissal under  
19 Rule 12(b)(6).” Albino, 747 F.3d at 1166 (overruling Wyatt v. Terhune, 315 F.3d 1108, 1119  
20 (9th Cir. 2003), insofar as it held that failure to exhaust should be raised by defendants as an  
21 “unenumerated Rule 12(b) motion.”).

22 To survive a motion to dismiss under Rule 12(b)(6), Federal Rules of Civil Procedure, a  
23 complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that  
24 is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic  
25 Corp. v. Twombly, 550 U.S. 544, 570 (2007)). The court must accept as true the allegations of  
26 the complaint, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), and  
27 construe the pleading in the light most favorable to plaintiff, Jenkins v. McKeithen, 395 U.S. 411,  
28 421, reh’g denied, 396 U.S. 869 (1969). Pro se pleadings are held to a less stringent standard than

1 those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972).

2 The court may consider facts established by exhibits attached to the complaint. Durning  
3 v. First Boston Corp., 815 F.2d 1265, 1267 (9th Cir. 1987). The court may also consider facts  
4 that may be judicially noticed, Mullis v. United States Bankruptcy Ct., 828 F.2d 1385, 1388 (9th  
5 Cir. 1987); and matters of public record, including pleadings, orders, and similar papers filed with  
6 the court, Mack v. South Bay Beer Distributors, 798 F.2d 1279, 1282 (9th Cir. 1986).

7 IV. Discussion

8 Construing the pertinent allegations of the FAC in the light most favorable to plaintiff, and  
9 with reference to the substance of plaintiff's opposition and surreply, the court is unable to  
10 conclude that plaintiff's failure to exhaust his administrative remedies was not due to the effective  
11 unavailability of those remedies.

12 There is support for plaintiff's argument that his failure to timely submit his initial  
13 grievance may be excused because the appropriate forms for submitting a grievance were not  
14 timely made available to him. In Marella v. Terhune, 568 F.3d 1024 (9th Cir. 2009) (per curiam),  
15 the Court of Appeals reversed the district court's dismissal of a prisoner case for failure to  
16 exhaust administrative remedies in part because the inmate did not have access to the necessary  
17 grievance forms within the prison's time limits. The plaintiff in Marella contended that he was  
18 unable to acquire and complete a grievance within 15 days after his alleged assault (he submitted  
19 his grievance 33 days thereafter) because he initially spent two days in the hospital, was then  
20 moved to the infirmary, and then placed in administrative segregation. His appeal was then  
21 rejected by prison officials as untimely at the first formal level of review. The Court of Appeals,  
22 relying on CDCR's pertinent regulations,<sup>6</sup> held that plaintiff's failure to timely submit his

23 \_\_\_\_\_  
24 <sup>6</sup> The Court of Appeals summarized these regulations as follows, Marella, 568 F.3d at 1027:

25 The California Code of Regulations provides that an inmate must  
26 submit an appeal within fifteen working days of the event or  
27 decision being appealed, but the appeals coordinator is only  
28 permitted to reject an appeal if "[t]ime limits for submitting the  
appeal are exceeded *and* the appellant had the opportunity to file  
within the prescribed time constraints." Cal. Code Regs. tit. 15 §§  
3084.6(c) and 3084.3(c)(6) (emphasis added). The California  
Department of Corrections and Rehabilitation Operating Manual

1 grievance should not defeat his claim if plaintiff did not have access to the necessary form and the  
2 ability to complete and timely submit it. The case was remanded to the district court to make  
3 “factual findings as to whether Marella had access to the necessary forms and whether he had the  
4 ability to file during his stay in the hospital and prison infirmary, or during the administrative  
5 lockdown.” Id. at 1027. Accord, Millner v. Biter, 2016 WL 110425, at \*6-7, 2016 U.S. Dist.  
6 LEXIS 3213 (E.D. Cal. Jan. 11, 2016) (Case No. 1:13-cv-02029 AWI SAB P) (recommending  
7 denial of defendants; motion for summary judgment subject to an evidentiary hearing to  
8 determine whether the administrative grievance process was available to plaintiff during his  
9 placement in a mental health crisis bed, suicide watch, and subsequent recovery; and, if so,  
10 whether filed an untimely grievance and received no response); see also Sapp, supra, 623 F.3d at  
11 822 (citing with approval decisions in the Seventh and Eighth Circuits which have held “that  
12 administrative remedies are not ‘available,’ and exhaustion is therefore not required, where prison  
13 officials refuse to give a prisoner the forms necessary to file an administrative grievance.” (citing  
14 Dale v. Lappin, 376 F.3d 652, 656 (7th Cir. 2004), and Miller v. Norris, 247 F.3d 736, 738, 740  
15 (8th Cir. 2001)).

16 In the present case, the FAC asserts that “[i]n December of 2010 I filed a 602 to K.A.  
17 Daly the appeals coordinator but I never got a respon[s]e.” ECF No. 36 at 1. In his surreply  
18 reviewed by this court, plaintiff contends that, following his alleged injury, he was hospitalized  
19 “until the next week;” then placed in CSP-SAC’s “CTC” for a “few weeks;” then placed in  
20 administrative segregation where plaintiff was unable to obtain all the appropriate materials “until  
21 Sunday.” ECF No. 40 at 1. Plaintiff also states that, at the time of his injury, he was receiving  
22 involuntary psychotropic medications to treat visual and auditory hallucinations. See ECF No.  
23 42. Plaintiff explains that, while in administrative segregation, he initially submitted his  
24 grievance on December 9, 2010, but that it was “sent back to me on 12-15-10 saying that it had to

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26 directs the appeals coordinator to “ensure that the inmate or parolee  
27 had, in fact, the opportunity to file in a timely manner.” Section  
28 54100.8.1. Thus, the prison’s regulations explicitly create an  
exception to the timely filing requirement. If Marella was unable to  
file within the fifteen-day filing period, his failure to file timely  
does not defeat his claim.



1 be placed in a U Save Em envelope to get a log number w[h]ich I did and sent it back in.” Id.  
2 Plaintiff alleges that he received no response. These allegations indicate that there are factual  
3 matters beyond the FAC which must be resolved before the court can determine whether  
4 administrative remedies were “effectively unavailable” to plaintiff during the relevant period.  
5 The necessary assessment cannot be made on a motion to dismiss but may be further developed  
6 and resolved on a motion for summary judgment.

7 Further, if plaintiff can demonstrate that he was unable, due to no fault of his own, to  
8 timely submit his grievance, then the court must next determine whether the failure of prison  
9 officials to respond to his grievance was based on acceptable reasons. See Sapp, supra, 623 F.3d  
10 at 824 (when prison officials decline to reach the merits of a grievance “for reasons inconsistent  
11 with or unsupported by applicable “regulations,” administrative remedies were “effectively  
12 unavailable.”); see also, id. at 822 (citing with approval Dole v. Chandler, 438 F.3d 804, 809, 811  
13 (7th Cir. 2006), which holds that “prison officials’ failure to respond to a properly filed grievance  
14 makes remedies ‘unavailable’ and therefore excuses a failure to exhaust.”); accord, Nunez, supra,  
15 591 F.3d at 1224-26 (plaintiff excused from exhausting administrative remedies where he took  
16 “reasonable steps” to exhaust his claim but was precluded from exhausting because of an official  
17 mistake).

18 For these many reasons, this court finds that this is not the “rare event” when failure to  
19 exhaust is clear on the face of the complaint. See Albino, 747 F.3d at 1166. Although plaintiff  
20 has not shown that administrative remedies were “effectively unavailable” to him during the  
21 relevant period, he has demonstrated that this as an issue that should be addressed on a fuller  
22 record at summary judgment. Therefore, defendants’ motion to dismiss should be denied without  
23 prejudice to filing a motion for summary judgment on the same matter.

#### 24 V. Plaintiff’s Motions to Compel Discovery and for Appointment of Counsel

25 Plaintiff’s motion to compel discovery is premature because discovery has not yet opened  
26 in this case. Moreover, plaintiff is informed that, once discovery commences, he must serve his  
27 formal discovery requests directly on defendants without involving the court (unless, after  
28 seeking informal resolution of any discovery dispute, plaintiff in good faith believes that

1 defendants are not being forthcoming). Therefore, plaintiff's motion to compel discovery, ECF  
2 No. 32, is denied.

3 Finally, plaintiff moves for appointment of counsel on the ground that he is mentally ill  
4 and suicidal; that he is receiving involuntary psychotropic medications; that he "feel[s] someone  
5 should have helped me exhaust my administrative remedies (sic);" and because if he has "to go to  
6 trial I don't see myself going pro per." ECF No. 42.

7 This court is without authority to require counsel to represent indigent plaintiffs in Section  
8 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). Only in certain  
9 exceptional circumstances may the court request that a specific attorney voluntarily represent  
10 such plaintiff. See 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.  
11 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In making this  
12 assessment, the court must consider plaintiff's likelihood of success on the merits of his action as  
13 well as plaintiff's ability to articulate his claims pro se in light of the complexity of the legal  
14 issues involved. See Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009). Plaintiff bears the  
15 burden of demonstrating exceptional circumstances. Circumstances common to most prisoners,  
16 such as lack of legal education and limited law library access, do not establish exceptional  
17 circumstances warranting the appointment of voluntary counsel. Id.

18 In the present case the court finds, at this time, that plaintiff has not met his burden. The  
19 merits of plaintiff's claims (moreover the precise contours of plaintiff's claims, see n.1, supra)  
20 remain unclear, and may be resolved if a copy of plaintiff's original administrative grievance can  
21 be located. The court has found that the FAC states potentially cognizable Eighth Amendment  
22 claims for excessive force against defendants Deleon and Sakyi based on plaintiff's allegations  
23 that, despite his pelvis fracture, defendants and others pulled plaintiff out of a stretcher, dragged  
24 him, twisted his arm and punched him in the face. In light of plaintiff's failure to exhaust his  
25 administrative remedies, these allegations have not yet been sufficiently developed to conclude  
26 that plaintiff is likely to succeed on the merits of his claims. Only upon further development of  
27 this case can the court assess plaintiff's ability to articulate his claims pro se in light of the  
28 complexity of the legal issues involved. See Palmer, supra, 560 F.3d at 970. Accordingly,

1 plaintiff's request for appointment of counsel will be denied without prejudice at the present time.

2 VI. Conclusion

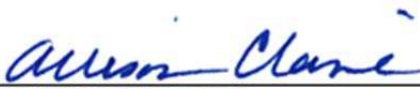
3 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 4 1. Defendants' motion to strike, ECF No. 43, is granted in part and denied in part.
- 5 2. Plaintiff's motion to compel discovery, ECF No. 32, is denied as premature.
- 6 3. Plaintiff's motion for appointment of counsel, ECF No. 42, is denied without  
7 prejudice.

8 Further, IT IS HEREBY RECOMMENDED that defendants' motion to dismiss, ECF No.  
9 33, be denied without prejudice to the filing of a motion for summary judgment on the same  
10 matter after fuller development of the record.

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

18 DATED: January 19, 2016

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20 ALLISON CLAIRE  
21 UNITED STATES MAGISTRATE JUDGE  
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