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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JULIUS ANDERSON,  
Plaintiff,  
v.  
CALIFORNIA MEDICAL FACILITY,  
SOLANO, et al.,  
Defendants.

No. 2:16-cv-0018 TLN CKD P

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. On October 28, 2016, plaintiff was given leave to file a third amended complaint. Since that date, plaintiff has filed two documents titled “third amended complaint”: one on December 6, 2016 and one on January 17, 2017. Good cause appearing, this action will proceed on the later-filed complaint and the earlier one will be stricken.

Plaintiff’s January 17, 2017 third amended complaint is before the court for screening under 28 U.S.C. § 1915A(a). The court has conducted the required screening and finds that plaintiff may proceed with the following claims:

1. Claim arising under the Eighth Amendment for excessive force against defendant Hernandez as described in section V, paragraph 7 of plaintiff’s third amended complaint (ECF No. 37 at 8);

////

1           2. Claim for retaliating against plaintiff for the exercise of his First Amendment rights  
2 against defendant Mendoza as described in section V, paragraphs 10-11, of the third amended  
3 complaint (Id. at 8-9); and

4           3. Claim arising under the Eighth Amendment for denial of adequate medical care against  
5 defendant Mendoza as described in section V, paragraph 10, of plaintiff's third amended  
6 complaint (Id.) .

7           In all other respects, plaintiff's third amended complaint fails to state a claim upon which  
8 relief can be granted. Of note, plaintiff's claims against the California Medical Facility are barred  
9 by the Eleventh Amendment. Alabama v. Pugh, 438 U.S. 781 (1978) (per curiam). Further,  
10 although plaintiff asserts claims arising under California law, he fails to plead compliance with  
11 the California Government Claims Act. See Mangold v. California Pub. Utils. Comm'n, 67 F.3d  
12 1470, 1477 (9th Cir. 1995). Plaintiff does not state a claim upon which relief can be granted  
13 against defendant Harris in section V, paragraph 6 of plaintiff's third amended complaint (ECF  
14 No. 37 at 7) as he does not provide facts suggesting he was subjected to cruel and unusual  
15 punishment, nor does he identify conduct engaged in by him protected under the First  
16 Amendment which caused Harris to retaliate.<sup>1</sup>

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

18           1. The "third amended complaint" filed by plaintiff on December 6, 2016 is stricken.

19           2. Service is appropriate for defendants Hernandez and Mendoza.

20           3. The Clerk of the Court shall send plaintiff two USM-285 forms, one summons, an  
21 instruction sheet and a copy of the third amended complaint (ECF No. 37).

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

24           a. The completed Notice of Submission of Documents;

25 \_\_\_\_\_  
26 <sup>1</sup> In paragraph 6, plaintiff also asserts defendant Harris violated his rights under the Health  
27 Insurance Portability and Accountability Act (HIPPA), but he does not identify a claim arising  
28 under HIPPA in the section of his third amended complaint where he identifies his causes of  
action. In any case, HIPPA does not provide for a private right of action. See Webb v. Smart  
Document Solutions, LLC, 499 F.3d 1078, 1082 (9th Cir. 2007).

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- b. One completed summons;
  - c. One completed USM-285 form for each defendant listed in number 2 above;
- and
- d. Three copies of the endorsed third amended complaint (ECF No. 37).

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

IT IS HEREBY RECOMMENDED that all defendants other than defendants Hernandez and Mendoza and all claims other than those arising under the First and Eighth Amendments described above be dismissed.

These findings and recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, plaintiff may file written objections with the court. The document should be captioned "Objections to Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: July 20, 2017

  
\_\_\_\_\_  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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No. 2:16-cv-0018 TLN CKD P

NOTICE OF SUBMISSION  
OF DOCUMENTS

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

- \_\_\_\_\_ completed summons form
- \_\_\_\_\_ two completed USM-285 forms
- \_\_\_\_\_ copies of the \_\_\_\_\_

Third Amended Complaint

DATED:

\_\_\_\_\_  
Plaintiff