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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID WESLEY BIRRELL, et al.,  
Plaintiffs,  
v.  
JOSEPH A. BICK, et al.,  
Defendants.

No. 2:16-cv-1818 JAM CKD P

ORDER AND  
FINDINGS AND RECOMMENDATIONS

Plaintiffs, California prisoners proceeding with counsel, have filed an action for violation of civil rights under 42 U.S.C. § 1983. Plaintiffs have paid the filing fee. On March 23, 2017, plaintiffs’ complaint was dismissed with leave to file an amended complaint. Plaintiffs have now filed an amended complaint.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

The court has conducted the required screening with respect to plaintiffs’ amended complaint and finds that the amended complaint states a claim upon which relief can be granted for injunctive relief under the Eighth Amendment against defendant Fox in his official capacity as

1 the Warden of the California Medical Facility. No plaintiff has stated a claim for damages,  
2 however, because there are no specific facts alleged indicating any plaintiff has, as of yet,  
3 suffered any actionable harm as the result of any of defendants' actions. See Ashcroft v. Iqbal,  
4 556 U.S. 662, 678 (2009) (In order to state a claim upon which relief can be granted,  
5 "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
6 statements do not suffice.") See also 28 U.S.C § 1997e(e) (prisoners may not bring federal action  
7 for mental or emotional injury without a showing of a prior physical injury).

8 Accordingly, IT IS HEREBY ORDERED that defendant Fox shall reply to plaintiffs'  
9 amended complaint within the time provided in Fed. R. Civ. P. 12(a).

10 IT IS HEREBY RECOMMENDED that all defendants other than defendant Fox in his  
11 official capacity as Warden of the California Medical Facility be dismissed.

12 These findings and recommendations are submitted to the United States District Judge  
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
14 after being served with these findings and recommendations, plaintiffs may file written objections  
15 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings  
16 and Recommendations." Plaintiffs are advised that failure to file objections within the specified  
17 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153  
18 (9th Cir. 1991).

19 Dated: August 30, 2017

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21 CAROLYN K. DELANEY  
22 UNITED STATES MAGISTRATE JUDGE

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25 birr1818.1(b)