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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMARIO MOORE,
Plaintiff,
v.
CATHERINE FONTECHA, et al.,
Defendants.

No. 2:16-cv-2138 CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff is a California prisoner proceeding pro se and in forma pauperis. On June 6, 2017, the court screened plaintiff’s complaint as the court is required to do under 28 U.S.C. § 1915A(a). The court dismissed the complaint with leave to file an amended complaint. Plaintiff has now filed an amended complaint.

The court must dismiss a complaint, or portion thereof, filed by a prisoner 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).

After conducting the required screening, the court finds that plaintiff states a claim against defendant Dr. C. Smith in his official capacity as the Chief Physician at Mule Creek State Prison for injunctive relief concerning care for an inguinal hernia. As for plaintiff’s claims for damages arising under the Eighth Amendment concerning denial of medical care, plaintiff has not plead

1 facts suggesting any named defendant has caused plaintiff injury by being at least deliberately
2 indifferent to his serious medical needs. See Estelle v. Gamble, 429 U.S. 97, 104-05 (1976).
3 The other allegations, at most, amount to negligence and a showing of merely negligent medical
4 care is not enough to establish a constitutional violation. Frost v. Agnos, 152 F.3d 1124, 1130
5 (9th Cir. 1998).

6 Also, plaintiff identifies the San Joaquin County General Hospital as a defendant in his
7 complaint. A municipality, or a department thereof, can be liable under 42 U.S.C. § 1983 when
8 an injury occurs pursuant to execution of a custom or policy of the municipality. Monell v. Dep't
9 of Soc. Services of N.Y.C., 436 U.S. 658, 694 (1978). Plaintiff fails to allege any facts which
10 reasonably suggest it was a specific policy or custom of the San Joaquin County General Hospital
11 that caused him injury.

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

- 13 1. Service is appropriate for defendant Dr. C. Smith.
- 14 2. The Clerk of the Court shall send plaintiff a USM-285 form, summons, an instruction
15 sheet and a copy of the amended complaint.
- 16 3. Within thirty days from the date of this order, plaintiff shall complete the attached
17 Notice of Submission of Documents and submit the following documents to the court:
 - 18 a. The completed Notice of Submission of Documents;
 - 19 b. One completed summons;
 - 20 c. One completed USM-285 form; and
 - 21 d. Two copies of the endorsed amended complaint.
- 22 4. Plaintiff need not attempt service on defendant Dr. Smith and need not request waiver
23 of service. Upon receipt of the above-described documents, the court will direct the United States
24 Marshal to serve Dr. Smith pursuant to Federal Rule of Civil Procedure 4 without payment of
25 costs.
- 26 5. The Clerk of the Court assign a district court judge to this case.

27 /////

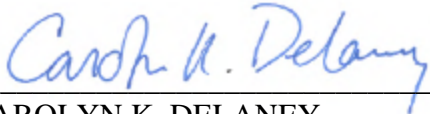
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IT IS HEREBY RECOMMENDED that all defendants other than defendant Dr. C. Smith be dismissed.

These findings and recommendations are 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 after being served with these findings and recommendations, plaintiff may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time waives the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: January 31, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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JAMARIO MOORE,
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Defendants.

No. 2:16-cv-2138 CKD P

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 _____
Amended Complaint

DATED:

Plaintiff