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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARIO MICCIO,
Plaintiff,
v.
MIRANDA, et al.,
Defendants.

No. 2:17-cv-0932 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. Plaintiff's first 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 the amended complaint states claims upon which plaintiff may proceed under the Eighth Amendment against defendants Miranda, Abdur-Rahman, Gideon and Lewis for both damages and injunctive relief.

As for defendant Kernan, the Secretary of the California Department of Corrections and Rehabilitation, the court will recommend that he be dismissed as there are no allegations that he was personally involved in any violation of civil rights, see Barren v. Harrington, 152 F.3d 1193, 1194-95 (9th Cir. 1998) and there is no respondeat superior liability under section 1983, Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

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

2 1. The Clerk of the Court is directed to assign a district court judge to this case.

3 2. Service is appropriate for defendants Miranda, Abdur-Rahman, Gideon and Lewis.

4 3. The Clerk of the Court shall send plaintiff four USM-285 forms, one summons, an
5 instruction sheet and a copy of the amended complaint.

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

8 a. The completed Notice of Submission of Documents;

9 b. One completed summons;

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

11 and

12 d. Four copies of the endorsed amended complaint.

13 5. Plaintiff need not attempt service on defendants and need not request waiver of service.

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

17 6. Failure to comply with this order will result in a recommendation that this action be
18 dismissed without prejudice.

19 IT IS HEREBY RECOMMENDED that defendant Kernan be dismissed.

20 These findings and recommendations are submitted to the United States District Judge
21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen after
22 being served with these findings and recommendations, plaintiff may file written objections with
23 the court. The document should be captioned "Objections to Magistrate Judge's Findings and
24 Recommendations." Plaintiff is advised that failure to file objections within the specified time

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1 waives the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
2 1991).

3 Dated: March 14, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARIO MICCIO,
Plaintiff,
v.
MIRANDA, et al.
Defendants.

No. 2:17-cv-0932 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