-GSA (PC) Jimene	ez v. Wenciker et al	Doc. 4	6
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8	HNITED STA	TES DISTRICT COURT	
9	EASTERN DISTRICT OF CALIFORNIA		
10	EASTERN D	ISTRICT OF CALIFORNIA	
	MICHEL A HMENEZ	1.07 av 01101 LIO CCA DC	
11	MIGUEL A. JIMENEZ,	1:07-cv-01191-LJO-GSA-PC	
12	Plaintiff,	FINDINGS AND RECOMMENDATIONS, RECOMMENDING THAT THIS ACTION BE	
13	V.	DISMISSED, WITH PREJUDICE, FOR FAILURE TO STATE A CLAIM UPON	
14	R. WENCIKER, et al.,	WHICH RELIEF MAY BE GRANTED (Doc. 43.)	
15	Defendants.	OBJECTIONS, IF ANY, DUE WITHIN	
16		THIRTY DAYS	
17			
18	Miguel A. Jimenez ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action		
19	pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on August 17, 2007,		
20	against defendants O'Brien, Tate, Wenciker, and Noyce, for deliberate indifference to his serious medical		
21	needs in violation of the Eighth Amendment. (Doc. 1.) On April 19, 2010, the Court issued an order		
22	dismissing the claims in the Complaint against defendants O'Brien and Tate, with leave to amend. (Doc.		
23	42.) The Court's order required Plaintiff to either file an amended complaint or notify the Court of his		
24	willingness to proceed only against defendants Wenciker and Noyce. (Doc. 42.) On May 20, 2010,		
25	Plaintiff filed the First Amended Complaint. (Doc. 43.)		
26	On December 13, 2010, the undersigned dismissed Plaintiff's First Amended Complaint for		
27	failure to state a claim upon which relief may be granted and gave Plaintiff leave to file a Second		
28		1	

Amended Complaint within thirty days. 28 U.S.C. § 1915A; 28 U.S.C. § 1915(e). (Doc.45.) To date, Plaintiff has not complied with or otherwise responded to the Court's order. As a result, there is no pleading on file which sets forth any claims upon which relief may be granted under § 1983.

Accordingly, pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), the undersigned HEREBY RECOMMENDS that:

- 1. This action be dismissed, with prejudice, based on Plaintiff's failure to state any claims upon which relief may be granted under section 1983; and
- 2. The Clerk be DIRECTED to close this case.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days 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 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: February 3, 2011 UNITED STATES MAGISTRATE JUDGE