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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TORY BALL,  
Plaintiff,  
vs.  
JAMES YATES, et al.,  
Defendants.

Case No. 1:10-cv-00639 LJO JLT (PC)  
FINDINGS AND RECOMMENDATIONS  
RECOMMENDING THIS ACTION BE  
DISMISSED FOR FAILURE TO STATE A  
CLAIM  
(Doc. 9)

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. By order filed April 29, 2011, the Court screened Plaintiff's complaint and dismissed it with leave to amend. (Doc. 9.) The Court found that: (1) Plaintiff's allegations against Defendants Yates, Carr, and Mendez were insufficient to impose liability on these supervisory prison officials under § 1983; (2) Plaintiff's allegations against Defendant Nelson were insufficient to show deliberate indifference under the Eighth Amendment; and (3) Plaintiff's official capacity claims, which seek only monetary damages, are barred by the Eleventh Amendment. (Id. at 5-6.)

On May 27, 2011, Plaintiff filed a motion for an extension of time to file an amended complaint in accordance with the Court's April 29, 2011 order. (Doc. 10.) In response, the Court granted Plaintiff thirty additional days to file an amended complaint. (Doc. 11.) Nevertheless, the thirty-day period has since expired, and Plaintiff has not filed an amended complaint or otherwise responded to the Court's orders.

1           Accordingly, for the reasons set forth in the Court’s April 29, 2011 screening order and because  
2 Plaintiff has failed to file an amended complaint that corrects the deficiencies identified in his pleadings,  
3 it is **HEREBY RECOMMENDED** that:

- 4           1.       This action be **DISMISSED WITH PREJUDICE** for failure to state a claim;
- 5           2.       This dismissal count as a strike pursuant to 28 U.S.C. § 1915(g); and
- 6           3.       This case be closed.

7           These findings and recommendations are submitted to the United States District Judge assigned  
8 to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one (21) days after being  
9 served with these findings and recommendations, Plaintiff may file written objections with the Court.  
10 The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.”  
11 Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal  
12 the District Court’s order. See *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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14 IT IS SO ORDERED.

15 Dated: July 14, 2011

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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