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

JARON LAMAR BRIGNAC,

Plaintiff,

No. CIV S-09-1614 FCD EFB P

vs.

JAMES TILTON, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

Jaron Lamar Brignac, an inmate confined at California State Prison, Sacramento, filed this pro se action in Sacramento County Superior Court, alleging violations of 42 U.S.C. § 1983. Defendants removed the action to this court.

On November 23, 2010, defendants filed a motion to dismiss, arguing that plaintiff had failed to state facts supporting his claims for 1) misappropriation of veteran’s benefits by a fiduciary; 2) forgery; and 3) violation of the RICO Act. On January 21, 2011, the court ordered plaintiff to file an opposition or statement of no opposition to the motion to dismiss. Instead, on January 31, 2011, plaintiff filed a first amended complaint.

As plaintiff failed to oppose defendants’ motion to dismiss, the motion to dismiss should be granted with leave to amend. See Local Rule 230(1) (“Failure of the responding party to file an opposition or to file a statement of no opposition may be deemed a waiver of any opposition

1 to the granting of the motion”). Should the district court adopt these findings and
2 recommendations, the court will screen plaintiff’s amended complaint pursuant to 28 U.S.C.
3 § 1915A.

4 Accordingly, it is hereby RECOMMENDED that:

- 5 1. Defendant’s motion to dismiss be granted;
- 6 2. Plaintiff be granted leave to file an amended complaint, and his first amended
7 complaint be deemed properly filed.

8 These findings and recommendations are submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
10 after being served with these findings and recommendations, any party may file written
11 objections with the court and serve a copy on all parties. Such a document should be captioned
12 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
13 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
14 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

15 Dated: June 20, 2011.

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17 EDMUND F. BRENNAN
18 UNITED STATES MAGISTRATE JUDGE
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