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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JERRY A. BURTON,	)	No. CV 04-7209-GW(CW) <sup>1</sup>
	)	
Plaintiff,	)	ORDER ACCEPTING IN PART AND
	)	REJECTING IN PART SECOND REPORT
v.	)	AND RECOMMENDATION OF
	)	UNITED STATES MAGISTRATE JUDGE
M. YARBOROUGH, et al.,	)	
	)	
Defendants.	)	
_____	)	

Pursuant to 28 U.S.C. § 636(b)(1)(C), the court has reviewed the entire record in this action, as well as the Second Report and Recommendation of the United States Magistrate Judge. No objections to the Report and Recommendation have been received.

In light of Starr v. Baca, 652 F.3d 1202 (9th Cir. 2011), cert. denied, 80 U.S.L.W. 3462 (U.S. Apr. 30, 2012)(No. 11-834), the court finds that Plaintiff has stated a claim under Fed. R. Civ. P. 8(a) and 12(b)(6) in his fifth cause of action (deliberate indifference re: prison conditions), and that he may be able to amend to state a claim

<sup>1</sup> Plaintiff has another pending action: Burton v. Haws, No. CV 08-5834-GHK(CW). This Order concerns only the present action.

1 in one or more of three other causes of action, namely the fourth  
2 (conspiracy), sixth (due process) and seventh (failure to supervise).  
3 On the other hand, the court agrees with the Report and Recommendation  
4 that Plaintiff has failed to state a claim or to show that he could  
5 successfully amend as to three other causes of action, namely the  
6 first (right of association), second (retaliation), and third  
7 (deliberate indifference re: retaliation).

8 It is therefore **ORDERED** as follows:

9 1. Defendants' motions to dismiss (docket no. 82, filed  
10 November 4, 2009, and docket no. 84, filed November 6, 2009) are  
11 granted in part and denied in part.

12 2. Plaintiff's Fourth Amended Complaint is dismissed with leave  
13 to amend as further indicated below.

14 3. Within thirty (30) days of the filing date of this order,  
15 Plaintiff may file either a notice of amendment (indicating that he  
16 opts to amend by proceeding on his fifth cause of action alone and  
17 deleting his other claims); or (b) a fifth amended complaint  
18 (including his fifth cause of action and amended statements of any of  
19 the other causes of action noted above as capable of being amended).

20 4. If Plaintiff does not file a timely response to this order,  
21 his action may be subject to dismissal for failure to prosecute.

22 5. Once Plaintiff files a response to this order the court will  
23 issue further orders as appropriate.

24  
25 DATED: June 17, 2012



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26  
27 GEORGE H. WU  
28 United States District Judge