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

LAVELLE TYRONE PLAYER,

Plaintiff,

vs.

1: 06 CV 0754 AWI WMW PC

FINDINGS AND RECOMMENDATION

J. WOODFORD, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in a civil rights action pursuant to 42 U.S.C. § 1983.

On February 26, 2009, an order was entered, denying Plaintiff's motion to consolidate this case with case number 1:07-CV 1312 OWW DLB PC. In that order, the court noted that both actions assert claims of excessive force and inadequate medical care resulting from the use of force. Plaintiff was specifically directed that, should he desire to proceed in this action, he should so inform the court. Plaintiff was advised that should he fail to inform the court of his intention, a recommendation of dismissal would be entered, recommending dismissal of this action, without prejudice, as duplicative. Plaintiff has not filed a response to the order of February 26, 2009.

Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed, without

1 prejudice, as duplicative.

2 These findings and recommendations are submitted to the United States District Judge
3 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty days
4 after being served with these findings and recommendations, any party may file written
5 objections with the court and serve a copy on all parties. Such a document should be captioned
6 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
7 shall be served and filed within ten days after service of the objections. The parties are advised
8 that failure to file objections within the specified time waives all objections to the judge’s
9 findings of fact. See Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998). Failure to file
10 objections within the specified time may waive the right to appeal the District Court’s order.
11 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

12 IT IS SO ORDERED.

13 **Dated:** April 7, 2009

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE