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

DONALD J. ACKLEY,

Plaintiff,

vs.

1: 06 CV 0771 AWI WMW PC

FINDINGS AND RECOMMENDATION

D. CARROLL, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

By order filed December 11, 2008, the court issued an order dismissing the operative complaint for failure to state a claim as to certain defendants and directing Plaintiff to notify the court within thirty days regarding his intention to proceed against the remaining defendants. On December 31, 2008, Plaintiff filed a document titled as a written notification of his intention to proceed against defendants Carroll, Blevin, Wright and Uribe.

In the December 11, 2008, order the court informed Plaintiff of the deficiencies in his complaint regarding the remaining defendants, and dismissed the complaint on the ground that Plaintiff had failed to state a claim upon which relief could be granted as to those defendants. Because Plaintiff has not filed an amended complaint, the court recommends dismissal of the

1 claims as to those defendants. See Noll v. Carlson, 809 F. 2d 1446, 1448 (9th Cir. 1987)
2 (prisoner must be given notice of deficiencies and opportunity to amend prior to dismissing for
3 failure to state a claim).

4 Accordingly, IT IS HEREBY RECOMMENDED that Defendants Andrews, Stockman,
5 Robicheaux, Gill, Finley, Denney, Scribner, Lopez, Busby, Grannis, Andrews, Watson and Allen
6 be dismissed, and Plaintiff's claims for declaratory and injunctive relief be dismissed.

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

17
18 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed for
19 failure to state a claim upon which relief can be granted.

20 These findings and recommendations are submitted to the United States District
21 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636 (b)(1)(B). Within
22 twenty days after being served with these findings and recommendations, plaintiff may file
23 written objections with the court. Such a document should be captioned "Objections to
24 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
25 objections within the specified time waives all objections to the judge's findings of fact. See
26

1 Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998). Failure to file objections within the
2 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
3 F.2d 1153 (9th Cir. 1991).

4 IT IS SO ORDERED.

5 **Dated:** January 16, 2009

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE

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