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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEITH DUANE ARLINE, JR.,

1:07-cv-01097-LJO-GSA-PC

Plaintiff,

v.

WARDEN KEN CLARK,

Defendant.

FINDINGS AND RECOMMENDATIONS
FOR THIS ACTION TO PROCEED ON
PLAINTIFF’S CLAIMS BASED ONLY ON
TWO SPECIFIC INSTANCES OF MODIFIED
PROGRAMMING, AND DISMISSING ALL
OTHER CLAIMS
(Doc. 1)

Plaintiff Keith Duane Arline, Jr. (“plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on July 27, 2007. (Doc. 1.) On March 31, 2010, the court found that plaintiff’s complaint states a cognizable claim against defendant Warden Ken Clark for inadequate outdoor exercise under the Eighth Amendment, with regard to two specific instances of modified programming, one beginning on August 15, 2006, and the other beginning on October 20, 2006. (Doc. 40.) Plaintiff was given leave to either file an amended complaint or notify the court that he is agreeable to proceeding only with the claims found cognizable by the Court. On April 8, 2009, plaintiff filed written notice to the court that he intends to proceed only on the claims found cognizable by the court. (Doc. 41.)

Based on the foregoing, it is HEREBY RECOMMENDED that:

1. This action proceed against defendant Warden Ken Clark for inadequate outdoor exercise under the Eighth Amendment, only with regard to two specific instances of

1 modified programming, one beginning on August 15, 2006, and the other beginning
2 on October 20, 2006; and

3 2. All remaining claims be dismissed from this action.

4 These Findings and Recommendations will be submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
6 days after being served with these Findings and Recommendations, Plaintiff may file written
7 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
8 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
9 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
10 1153 (9th Cir. 1991).

11
12 IT IS SO ORDERED.

13 **Dated: April 9, 2010**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE