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

BARRY LOUIS LAMON,

Plaintiff,

vs.

1: 07 01390 LJO YNP SMS (PC)

FINDING AND RECOMMENDATION

DERRAL ADAMS, et al.,

Defendants.

On May 27, 2009, an order was entered, finding that the Second Amended Complaint stated a claim as to certain defendants. The order also noted that the Second Amended Complaint failed to state a claim as to the remaining defendants. Plaintiff was granted an opportunity to either proceed on the Second Amended Complaint or file a Third Amended Complaint. Plaintiff was advised that if he desired to correct the deficiencies identified in the Second Amended Complaint, he should file a Third Amended Complaint.

In response, Plaintiff filed a document titled as objections. Plaintiff indicates that he would like to proceed against the defendants he stated a claim against. Plaintiff also lodged objections to that portion of the order that identified the deficiencies in the Second Amended Complaint.

In an order entered on June 29, 2009, Plaintiff was advised that he had only two options.

1 If Plaintiff desired to correct the deficiencies noted in the May 7, 2009, order, he should file a
2 Third Amended Complaint. Plaintiff was specifically advised that if he failed to do so, this
3 action would proceed on the Second Amended Complaint and the Court would recommend
4 dismissal of the claims identified in the May 7th order. Plaintiff was granted thirty days in which
5 to file a Third Amended Complaint.

6 On July 21, 2009, Plaintiff again filed objections to the Court's order. Plaintiff again
7 objects to the procedure, and argues that the Second Amended Complaint is not deficient.
8 Because Plaintiff has chosen not to file a Third Amended Complaint, the Court will recommend
9 dismissal of the claims identified in the May 7, 2009, order. See Noll v. Carlson, 809 F. 2d 1446,
10 1448 (9th Cir. 1987) (prisoner must be given notice of deficiencies and opportunity to amend
11 prior to dismissing for failure to state a claim).

12 Accordingly, IT IS HEREBY RECOMMENDED that:

13 1. The following claims be dismissed: Failure to prevent Constitutional violations;
14 Access to courts; Supervisory liability; Inmate Appeal Policy.

15 2. The following Defendants be dismissed: Adams; Lopez; Hoffman; Worthman; Ruiz;
16 Jennings; Martinez; Franklin; Gomez; Yamat; Munoz.

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

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4 IT IS SO ORDERED.

5 **Dated:** July 31, 2009

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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