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

L. McELROY,

Plaintiff,

vs.

1:08 CV 00047 OWW YNP GSA (PC)

FINDINGS AND RECOMMENDATION

CDCR, 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 June 18, 2009, the court issued an order dismissing the operative complaint for failure to state a claim and directing plaintiff to file an amended complaint within thirty days. Plaintiff has not filed an amended complaint.

In the June 18, 2009, order the court informed plaintiff of the deficiencies in his complaint, and dismissed the complaint on the ground that plaintiff had failed to state a claim upon which relief could be granted. Because plaintiff has not filed an amended complaint, the court recommends dismissal without prejudice, pursuant to Local Rule 11-110, for failure to obey a court order.

Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed

1 without prejudice for failure to obey a court order.

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

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16 IT IS SO ORDERED.

17 **Dated: August 26, 2009**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE