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

LATWAHN McELROY,

Plaintiff,

vs.

1: 08 CV 00179 OWW YNP GSA (PC)

FINDINGS AND RECOMMENDATION

A. W. KAYS, 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 February 25, 2010, 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 February 25, 2010, 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 of the claims made in the original complaint with prejudice for failure to state a federal claim upon which the court could grant relief. See Noll v. Carlson, 809 F. 2d 1446, 1448 (9<sup>th</sup> Cir. 1987) (prisoner must be given notice of deficiencies and opportunity to

1 amend prior to dismissing for failure to state a claim).

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

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

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IT IS SO ORDERED.

**Dated: March 30, 2010**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE