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

KELLY MORGAN,

1:08-cv-00233-LJO-GSA-PC

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION
PROCEED ONLY AGAINST DEFENDANT
C/O M. HERNANDEZ ON PLAINTIFF’S
CLAIMS FOR RETALIATION AND
OBSTRUCTION OF MAIL, AND ALL
OTHER CLAIMS AND DEFENDANTS
BE DISMISSED

TILTON, et al.,

Defendants.

OBJECTIONS, IF ANY, DUE IN 30 DAYS

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Kelly Morgan (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The case now proceeds on the Third Amended Complaint filed by Plaintiff on July 28, 2011. (Doc. 45.) The Third Amended Complaint names as defendants James Tilton, (Secretary, CDCR); Scott Kernan (Director, CDCR); James Yates (Warden); Felix Igbinosa (CMO); Appeals Coordinators H. Martinez, C. Hudson and N. Grannis; Correctional Officers (“C/Os”) M. Hernandez, J. Garrison, R. Mendoza, A. Diaz and A. Silveira; and Ms. O’Brien (LVN), and alleges claims for retaliation, inadequate medical care, violation of due process, and obstruction of mail.

The Court screened Plaintiff’s Third Amended Complaint pursuant to 28 U.S.C. § 1915A and found that it states cognizable claims for relief under section 1983 against defendant C/O M. Hernandez for retaliation and obstruction of mail, in violation of the First Amendment. However, the Court found

1 that Plaintiff failed to state a claim against any of the other defendants. The Court found that Plaintiff
2 should not be granted further leave to amend, because it appears Plaintiff is not capable of curing the
3 deficiencies of the Court’s prior screening orders. Plaintiff has now filed four complaints without stating
4 a claim against any defendant except defendant C/O M. Hernandez.

5 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 6 1. This action proceed only against defendant C/O M. Hernandez, on Plaintiff’s claims for
7 retaliation and obstruction of mail, in violation of the First Amendment;
- 8 2. All remaining claims and defendants be dismissed from this action;
- 9 3. Plaintiff’s claims against defendants Tilton, Kernan, Yates, Igbiosa, Martinez, Hudson,
10 Grannis, Garrison, Mendoza, Diaz, Silveira, and O’Brien be dismissed from this action
11 based on Plaintiff’s failure to state any claims upon which relief may be granted against
12 them; and
- 13 4. Plaintiff’s claims for inadequate medical care and violation of due process be dismissed
14 for failure to state a claim upon which relief may be granted under section 1983.

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

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IT IS SO ORDERED.

Dated: September 7, 2011

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE