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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TRACY TAYLOR,

Plaintiff,

v.

MATTHEW CATE, et al.,

Defendants.

CASE NO. 1:11-cv-01957-LJO-GBC (PC)

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF ACTION,
WITH PREJUDICE, FOR FAILURE TO
STATE A CLAIM UPON WHICH RELIEF
MAY BE GRANTED AND FOR FAILURE TO
PROSECUTE

/ OBJECTIONS DUE WITHIN 21 DAYS

On November 28, 2011, Plaintiff Tracy Taylor (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983, alleging failure to provide orthopedic boots from the vendor of Plaintiff’s choice and denial of orthotics and orthopedic slippers on the grounds that medical staff has not established medical necessity. Compl. at 5-6, 8, Doc. 1. On May 15, 2012, the undersigned dismissed Plaintiff’s complaint for failure to state a claim upon which relief may be granted and ordered Plaintiff to file an amended complaint within thirty days. 28 U.S.C. §§ 1915A and 1915(e). Doc. 11. To date, Plaintiff has not complied with the Court’s order or requested an extension of time.

“In determining whether to dismiss an action for lack of prosecution, the district court is required to consider several factors: ‘(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.’” *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (quoting *Henderson v. Duncan*, 779

1 F.2d 1421, 1423 (9th Cir. 1986)). These factors guide a court in deciding what to do, and are not
2 conditions that must be met in order for a court to take action. *In re Phenylpropanolamine (PPA)*
3 *Products Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006).

4 In this instance, Plaintiff has not complied with or otherwise responded to the Court's orders.
5 As a result, there is no pleading on file that sets forth any claims upon which relief may be granted
6 under § 1983. Accordingly, pursuant to 28 U.S.C. §§ 1915A and 1915(e), the undersigned HEREBY
7 RECOMMENDS that this action be DISMISSED, with prejudice, based on Plaintiff's failure to state
8 any claims upon which relief may be granted under § 1983 and for failure to prosecute.

9 These Findings and Recommendations will be submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **twenty-one (21)**
11 **days** after being served with these Findings and Recommendations, Plaintiff may file written
12 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
13 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
14 specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d
15 1153, 1156-57 (9th Cir. 1991).

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17 IT IS SO ORDERED.

18 Dated: July 18, 2012

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21 UNITED STATES MAGISTRATE JUDGE