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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HARVEY CURTIS BAKER,
Plaintiff,
v.
JAMES A. YATES,
Defendant.

Case No. 1:12-cv-00126-LJO-SAB
**FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT DEFENDANT’S
MOTION TO DISMISS BE DENIED AS
MOOT**
ECF NO. 53
OBJECTIONS DUE WITHIN THIRTY (30)
DAYS

Plaintiff Harvey Curtis Baker (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action. On April 2, 2013, Defendant James A. Yates (“Defendant Yates”) filed a motion to dismiss. (ECF No. 53.) This matter was submitted to the undersigned magistrate judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 303 for findings and recommendations to the District Court.

Defendant Yates argues that Plaintiff’s claims against him should be dismissed because they fail to state a claim. However, shortly after Defendant Yates filed his motion to dismiss, the Court screened Plaintiff’s complaint pursuant to 28 U.S.C. § 1915A(a) and dismissed Plaintiff’s claims against Yates for failure to state a claim. (ECF No. 54.) Accordingly, the arguments raised in Defendant Yates’ motion were rendered moot by the Court’s screening order.

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1 Based upon the foregoing, the Court HEREBY RECOMMENDS that Defendant Yates'
2 motion to dismiss be DENIED as moot and without prejudice to Defendant Yates' right to raise
3 the same arguments in a motion to dismiss if Plaintiff opts to amend his claims against Defendant
4 Yates.

5 These Findings and Recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
7 days after being served with these Findings and Recommendations, any party may file written
8 objections with the Court and serve a copy on all parties. Such a document should be captioned
9 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
10 shall be served and filed within ten (10) days after service of the objections. The parties are
11 advised that failure to file objections within the specified time may waive the right to appeal the
12 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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15 IT IS SO ORDERED.

16 Dated: April 9, 2013

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19 UNITED STATES MAGISTRATE JUDGE
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