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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 JAMES  
A. YATES BE DISMISSED FROM THIS  
ACTION  
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 9, 2013, the Court screened Plaintiff’s complaint and found that it stated a cognizable claim under 42 U.S.C. § 1983 against Defendant Unidentified Correctional Officer Jane Doe #1 for the violation of Plaintiff’s rights under the Eighth Amendment. (ECF No. 54.) The Court further found that Plaintiff’s complaint failed to state any other claims. Specifically, Plaintiff’s complaint failed to state any claims under California state law, failed to state any claims for equitable relief, and failed to state any claims against Defendant James A. Yates.

The Court ordered Plaintiff to either file an amended complaint to cure the deficiencies in his non-cognizable claims or to notify the Court that he wishes to proceed only on the claims found to be cognizable in the Court’s screening order. On May 31, 2013, Plaintiff informed the Court that he wishes to proceed solely on the claims found to be cognizable in the Court’s screening order. (ECF No. 59.)

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Accordingly, it is HEREBY RECOMMENDED that:

1. This action proceed solely against Defendant Unidentified Correctional Officer Jane Doe #1 under 42 U.S.C. § 1983 for the violation of Plaintiff's rights under the Eighth Amendment; and
2. That Plaintiff's state law claims, claims for equitable relief and claims against Defendant James A. Yates be DISMISSED for failure to state a claim.

These Findings and Recommendations are submitted to the United States District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within 30 days after being served with a copy, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: June 4, 2013

  
UNITED STATES MAGISTRATE JUDGE