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

DENNIS G. CLAIBORNE,

Plaintiff,

No. CIV S-06-2919 FCD EFB P

vs.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION, , et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a state prisoner without counsel proceeding *in forma pauperis* with a civil rights action pursuant to 42 U.S.C. § 1983. On November 30, 2007, the court screened plaintiff’s complaint, found that it did not state a cognizable claim against the California Department of Corrections and Rehabilitation (“CDCR”), and informed plaintiff that he could either proceed with his action solely against defendants Harrison and Battey or file an amended complaint in an attempt to state a claim also against the CDCR. On December 12, 2007, plaintiff submitted the documents necessary for service against defendants Harrison and Battey. The court construes plaintiff’s election to proceed solely against defendants Harrison and Battey as consent to dismissal of all claims against the CDCR.

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1           Accordingly, it is hereby recommended that the CDCR be dismissed from this action  
2 without prejudice.

3           These findings and recommendations are submitted to the United States District Judge  
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days  
5 after being served with these findings and recommendations, any party may file written  
6 objections with the court and serve a copy on all parties. Such a document should be captioned  
7 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
8 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*  
9 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

10 Dated: January 31, 2008.

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12 EDMUND F. BRENNAN  
13 UNITED STATES MAGISTRATE JUDGE  
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