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

VERNON WAYNE McNEAL,

Plaintiff,

No. CIV S-07-2240 LKK EFB P

vs.

ERVIN, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983.

On October 28, 2008, the court dismissed plaintiff's claims against defendants R. K. Wong, R. Floto, N. Grannis, T. Felker, Rana, Lasky, Felice and Taylor pursuant to 28 U.S.C. § 1915A, with leave to amend. The court informed plaintiff he could proceed against defendants Ervin and Evert by submitting materials for service within 20 days, but the court would construe his election so to proceed as consent to dismissal of his claims against defendants R. K. Wong, R. Floto, N. Grannis, T. Felker, Rana, Lasky, Felice and Taylor without leave to amend.

On December 18, 2008, plaintiff submitted materials for service of defendants Ervin and Evert. The court finds plaintiff has consented to dismissal of claims against defendants R. K. Wong, R. Floto, N. Grannis, T. Felker, Rana, Lasky, Felice and Taylor without leave to amend.

1 Accordingly, it is hereby recommended that claims against defendants R. K. Wong, R.
2 Floto, N. Grannis, T. Felker, Rana, Lasky, Felice and Taylor be dismissed without prejudice.
3 These findings and recommendations are submitted to the United States District Judge assigned
4 to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days after being
5 served with these findings and recommendations, any party may file written objections with the
6 court and serve a copy on all parties. Such a document should be captioned

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

14 Dated: January 21, 2009.

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17 EDMUND F. BRENNAN
18 UNITED STATES MAGISTRATE JUDGE
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