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

BILLY DRIVER,

Plaintiff,

No. CIV S-08-1910 GEB EFB P

vs.

MARTEL, et al.,

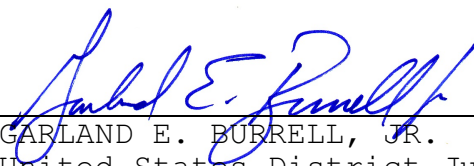
Defendants.

ORDER

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Plaintiff, a state prisoner proceeding pro se, filed this civil rights action seeking relief under 42 U.S.C. § 1983. On September 16, 2009, the undersigned adopted the magistrate judge’s findings and recommendations, which recommended that this action be dismissed for failure to state a claim. The Clerk of the Court duly entered judgment. On October 16, 2009, rather than filing a notice of appeal pursuant to Rule 3 of the Federal Rules of Appellate Procedure, plaintiff filed a motion for certificate of appealability pursuant to 28 U.S.C. § 2253, which applies only to habeas corpus proceedings or proceedings under 28 U.S.C. § 2255. See 28 U.S.C. § 2253(a). The court hereby construes plaintiff’s October 16, 2009 filing as a notice of appeal and orders the Clerk of the Court to process it accordingly.

Dated: December 22, 2009

  
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GARLAND E. BURRELL, JR.  
United States District Judge

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