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

VERNON TOWNER,

Plaintiff,

No. CIV S-08-2823 LKK EFB P

vs.

MICHAEL KNOWLES, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. By order filed November 20, 2009, the court found that plaintiff had stated a cognizable Eighth Amendment claim against defendant Lesane. The court further found that plaintiff failed to state cognizable claims against defendants CDCR, Knowles, Hubbard and Lewis. The order informed plaintiff he could proceed on the Eighth Amendment claim against defendant Lesane or file an amended complaint in an attempt to state a cognizable claim against Knowles, Hubbard and Lewis.¹ The court also informed plaintiff that the court would consider his decision to proceed against defendant Lesane as consent to the dismissal of his claims against

¹ In the November 20, 2009, order, the court also found that plaintiff's claim against CDCR could not be cured by amendment and recommended that plaintiff's claim against that defendant be dismissed without leave to amend.

1 defendant Knowles, Hubbard and Lewis without prejudice. On December 28, 2009, plaintiff
2 returned documents for service of process on defendant Lesane and on January 5, 2010, the court
3 ordered the United States Marshal to serve process on defendant Lesane. The court finds that
4 plaintiff has consented to the dismissal of his claims against defendants Knowles, Hubbard and
5 Lewis without prejudice.

6 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's claim against defendants
7 Knowles, Hubbard and Lewis be dismissed without prejudice.

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

15 Dated: February 25, 2010.

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17 EDMUND F. BRENNAN
18 UNITED STATES MAGISTRATE JUDGE
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