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

MALIK JONES,

Plaintiff,

No. CIV S-09-0619 GEB EFB P

vs.

D. SWINGLE, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS\

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He proceeds on his second amended complaint filed June 14, 2010.

On January 7, 2011, the court found that the second amended complaint stated potentially cognizable claims that defendants Swingle, Medina, Barker, Luther, and Harper were deliberately indifferent to plaintiff's serious medical needs in violation of the Eighth Amendment and that defendant Burgett retaliated against plaintiff for filing inmate appeals by confiscating plaintiff's wheelchair. The court further found that the remaining additional claims asserted in the second amended complaint, including those against Wilcox and Blanthorn, were deficient. The court gave plaintiff 30 days to either submit materials for service of process on defendants Luther and Harper or to file an amended complaint attempting to cure the deficiencies identified by the court.

1 The time for acting has passed and plaintiff has not submitted the materials necessary for
2 service on defendants Luther and Harper, has not file an amended complaint, or otherwise
3 responded to the court's order.

4 Accordingly, IT IS HEREBY RECOMMENDED that defendants Luther, Harper, Wilcox
5 and Blanthorn, as well as the deficient claims identified in the undersigned's January 7, 2011
6 order, be dismissed without prejudice.

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 fourteen 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: March 11, 2011.

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16 EDMUND F. BRENNAN
17 UNITED STATES MAGISTRATE JUDGE
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