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

O.Z. MARTIN,

Petitioner,

No. CIV S-09-1929 LKK GGH P

vs.

J. WALKER, et al.,

Respondents.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On July 29, 2009, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty days. Neither party has filed objections to the findings and recommendations.


The court has reviewed the file and finds the findings and recommendations to be supported by the record and by the magistrate judge’s analysis. Accordingly, IT IS HEREBY ORDERED that:

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1. The findings and recommendations filed July 29, 2009, are adopted in full;
2. Petitioner's Eighth Amendment claim is dismissed without prejudice; and
3. Petitioner may file his Eighth Amendment claim in a separate 42 U.S.C. § 1983 complaint, however, the court makes no decision as to whether this claim would be timely, under the relevant statute of limitations, or whether Petitioner exhausted administrative remedies, as required by the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321.

DATED: October 14, 2009.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT