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

ROBERT P. BENYAMINI,

Plaintiff,

No. CIV S-09-2453 EFB P

vs.

M. FORSYTHE, et al.,

Defendants.

ORDER AND
FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. Plaintiff commenced this action on September 1, 2009. Dckt. No. 1. On February 25, 2010, the court screened plaintiff’s complaint pursuant to 28 U.S.C. § 1915A. The court found service appropriate as to some defendants, but not all, and granted plaintiff thirty days to either return documents necessary to effect service of process on defendants against whom plaintiff had stated a cognizable claim, or to file an amended complaint. Dckt. No. 7. The time for acting passed, and plaintiff did not comply with the court’s order. On April 12, 2011, the court granted plaintiff an extension of 21 days to comply. Dckt. No. 12. As of August 30, 2010, plaintiff had still not complied with the February 25, 2010 order, but the court granted plaintiff another 30 days in which to comply. Dckt. No. 17. Thereafter, plaintiff requested a ninety day extension of time. Dckt. No. 18. On October 1, 2010 the court granted plaintiff an additional 30 day extension of time, and informed plaintiff that no further extensions of time

1 would be granted. Dckt. No. 19. Finally, on November 1, 2010, nine months after originally
2 ordered, plaintiff filed an amended complaint. Dckt. No. 20.

3 On March 25, 2011, the court found that plaintiff's amended complaint stated potentially
4 cognizable claims as to defendants T. Forsythe, M. Forsythe, Leese, Fenninokon, Dysekevice,
5 Ramirez, Hurtado, and O'Brian. Dckt. No. 21. The order found that plaintiff had failed to state
6 a cognizable equal protection claim or claims against defendants Thumser, Peterson and Arnold.
7 Plaintiff was directed to submit the documents to effect service of the amended complaint on T.
8 Forsythe, M. Forsythe, Leese, Fenninokon, Dysekevice, Ramirez, Hurtado, and O'Brian or to
9 file an amended complaint within thirty days. The order warned plaintiff that failure to comply
10 would result in a recommendation that this action be dismissed. The time for acting has passed
11 and plaintiff has not submitted the materials necessary for service on the above-listed defendants,
12 has not filed an amended complaint, or otherwise responded to the court's order.

13 Accordingly, the Clerk is directed to randomly assign a United States District Judge to
14 this case.

15 Further, it is hereby RECOMMENDED that this action be dismissed for failure to
16 prosecute. *See* Fed. R. Civ. P. 41(b).

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

24 DATED: May 20, 2011.

25 
26 EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE