

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

RANDALL CUMMER,

Plaintiff,

No. CIV S-09-2702 DAD P

vs.

JAMES TILTON, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has filed an application to proceed in forma pauperis under 28 U.S.C. § 1915. This proceeding was referred to the undersigned magistrate judge in accordance with Local Rule 302 and 28 U.S.C. § 636(b)(1).

I. Application to Proceed In Forma Pauperis

Plaintiff has submitted three in forma pauperis applications. The first application, filed on September 17, 2009, makes the showing required by 28 U.S.C. § 1915(a). Accordingly, plaintiff will be granted leave to proceed in forma pauperis. The applications filed on September 22, 2009 and October 8, 2009, will be denied as unnecessary.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. See 28 U.S.C. §§ 1914(a) & 1915(b)(1). An initial partial filing fee of \$0.18 will be assessed by this

1 order. See 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate
2 agency to collect the initial partial filing fee from plaintiff’s prison trust account and forward it to
3 the Clerk of the Court. Thereafter, plaintiff will be obligated to make monthly payments of
4 twenty percent of the preceding month’s income credited to plaintiff’s prison trust account.
5 These payments will be collected and forwarded by the appropriate agency to the Clerk of the
6 Court each time the amount in plaintiff’s account exceeds \$10.00, until the filing fee is paid in
7 full. See 28 U.S.C. § 1915(b)(2).

8 II. Screening Requirement

9 The court is required to screen complaints brought by prisoners seeking relief
10 against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C.
11 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
12 claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be
13 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28
14 U.S.C. § 1915A(b)(1) & (2).

15 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
16 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
17 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
18 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
19 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
20 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
21 Cir. 1989); Franklin, 745 F.2d at 1227.

22 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and
23 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
24 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic
25 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47
26 (1957)). However, in order to survive dismissal for failure to state a claim a complaint must

1 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain
2 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic,
3 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the
4 allegations of the complaint. See Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740
5 (1976). The court must also construe the pleading in the light most favorable to the plaintiff and
6 resolve all doubts in the plaintiff’s favor. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

7 The Civil Rights Act under which this action was filed provides as follows:

8 Every person who, under color of [state law] . . . subjects, or causes
9 to be subjected, any citizen of the United States . . . to the
10 deprivation of any rights, privileges, or immunities secured by the
11 Constitution . . . shall be liable to the party injured in an action at
12 law, suit in equity, or other proper proceeding for redress.

13 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
14 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
15 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
16 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
17 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
18 omits to perform an act which he is legally required to do that causes the deprivation of which
19 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

20 Moreover, supervisory personnel are generally not liable under § 1983 for the
21 actions of their employees under a theory of respondeat superior and, therefore, when a named
22 defendant holds a supervisory position, the causal link between him and the claimed
23 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
24 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory
25 allegations concerning the involvement of official personnel in civil rights violations are not
26 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

////

////

1 III. Plaintiff's Complaint

2 In his complaint, plaintiff sets forth seven causes of action. He also identifies
3 eleven named defendants along with several "Doe" defendants. The action rose while plaintiff
4 was incarcerated at Mule Creek State Prison.

5 A. First Cause of Action

6 Plaintiff alleges that for approximately three weeks, defendants Tilton, Robinson,
7 Espinoza and Does 1-7 "arbitrarily, capriciously, and otherwise unlawfully" withheld his
8 personal property. (Compl. at 9.) In this regard, plaintiff contends that on August 23, 2005, he
9 arrived at Mule Creek State Prison on a bus with 27 other inmates. They were told that their
10 personal property would be stored pending their transfer to Salinas Valley State Prison, which
11 would occur in about a month. Plaintiff contends that his property was not on the bus and did not
12 actually arrive at Mule Creek State Prison until two weeks later. In addition, plaintiff claims that
13 he was denied access to his property from September 7, 2005 to September 28, 2005, a 3 week
14 period. Plaintiff claims that defendants violated: (1) his right to be free from unreasonable
15 seizure of his property; (2) his right to due process; (3) his right to equal protection; (4) his right
16 not to be subjected to cruel and unusual punishment; (5) his right not be subjected to "unjust
17 hardship;" (6) California Department of Corrections and Rehabilitation (CDCR) regulations, (7)
18 his right to be free from intentional and negligent infliction of "mental anguish and emotional
19 distress[.]" (Id.)¹

20 B. Second Cause of Action

21 Plaintiff alleges that from September 7, 2005 to September 28, 2005, defendants
22 Tilton, Robinson, Espinoza and Does 1-7 deprived him of his legal materials in violation of his
23 rights (1) to petition for "redress of grievances," (2) to his access to courts, (3) to be free from
24 unreasonable seizure of personal property, (4) to due process, (5) to equal protection of the law,

25
26 ¹ Plaintiff asserts that defendants' actions in this regard violated his rights under the Fourth, Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution and state law.

1 (6) to be free from cruel and unusual punishment, (7) to not be subjected to “cruel and unjust
2 hardship,” (8) to have CDCR personnel follow CDCR regulations, and (9) to be free from
3 intentional and negligent infliction of mental anguish and emotional distress. (Compl. at 11.)²

4 C. Third Cause of Action

5 On August 30, 2005, plaintiff appeared before defendants Tilton, Robinson,
6 Thissen, Heise and Does 1-4 at a hearing that plaintiff describes as an “invalid classification
7 proceeding.” (Compl. at 12.) In a subsequent inmate grievance, plaintiff complained that the
8 notice of hearing he was provided was defective because it stated that he would appear before a
9 “UCC” but the applicable regulations provide that the recommendation to transfer him had to be
10 made by an “initial classification committee.” (Id., Inmate Appeal Form dated Sept. 26, 2005,
11 Attach.) Plaintiff also contends that the decision to transfer him was invalid because he did not
12 receive the CDC form 128-G, and the composition of the committee and quorum requirement did
13 not comply with the applicable regulations. (Id.) Plaintiff claims his rights (1) to due process,
14 (2) to equal protection, (3) to be free from cruel and unusual punishment, (4) to not be subjected
15 to “cruel and unjust hardship,” (5) “to have CDCR personnel follow CDCR regulations,” and (6)
16 “to be free from intentional and negligent infliction of mental anguish and emotional distress”
17 were all violated. (Id. at 12.)³

18 D. Fourth Cause of Action

19 Plaintiff alleges that the level III prison that he was transferred to was more
20 “restrictive and oppressive” and that defendants Robinson, Thissen, Tilton and Does 1-4
21 authorized that transfer despite the alleged deficiencies noted above. In addition, plaintiff
22 contends that the defendants’ committee report falsely stated that plaintiff agreed with the
23

24 ² Plaintiff asserts that defendants’ actions in this regard violated his rights under the First,
25 Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution and state law.

26 ³ Plaintiff asserts that defendants’ actions in this regard violated his rights under the
Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution.

1 committee’s action and, although the report indicated that the committee members were present
2 at the hearing, defendant Heise was not present. (Compl. at 14; Doc. No. 1 at 73.) Plaintiff
3 claims his rights under the Fifth, Eighth and Fourteenth Amendments were violated specifically
4 as follows: (1) violation of due process rights, (2) violation of equal protection, (3) violation of
5 right to be free from cruel and unusual punishment, (4) violation of right not to be subjected to
6 “cruel and unjust hardship,” (5) violation of right to have CDCR personnel follows the
7 regulations, (6) violation “not to have falsified records maintained against him[,]” (7) violation
8 “to be free from intentional and negligent infliction of mental anguish and emotional distress . . .
9 and deliberate indifference toward his secured rights[.]” (Compl. at 14.)

10 E. Fifth Cause of Action

11 In his fifth cause of action plaintiff incorporates his previous allegations and
12 claims that defendants Robinson, Thissen, Tilton, Does 1-4, and Cook⁴ violated his rights under
13 the Fifth, Eighth and Fourteenth Amendments by denying him the: (1) right to due process, (2)
14 right to equal protection, (3) right to be free from cruel and unusual punishment, (4) right not be
15 subjected to “cruel and unjust hardship,” (5) right to have CDCR personnel follow CDCR
16 regulations, and (6) “right to be free from intentional and negligent infliction of mental anguish
17 and emotional distress[.]” (Compl. at 16.)

18 F. Sixth Cause of Action

19 Plaintiff alleges that defendants Tilton, Robinson, Reyes and Does 1-4 ignored
20 and delayed the processing of his emergency inmate appeal. Plaintiff has attached to his
21 complaint an inmate appeal form, dated September 16, 2005, on which plaintiff indicated that he
22 was submitting an “Emergency 602.” (Compl., Inmate Appeal Form at 1.) The attached appeal
23 appears to concern plaintiff’s alleged lack of access to his personal and legal property and
24 therein plaintiff argued that the regulations do not provide for the “forced” storage of inmate

25
26 ⁴ Plaintiff alleges that Cook was a Claims Service Representative (CSR) who endorsed plaintiff for transfer.

1 property. (Id.) Plaintiff alleges that this grievance was “arbitrarily and capriciously processed,
2 reviewed, excessively delayed, ignored, and otherwise obstructed, in violation of the CDCR’s
3 established grievance procedures and the State and Federal Constitutions[.]” As a result, plaintiff
4 claims violation of the First, Fifth, Sixth, Eighth and Fourteenth Amendments and state law.

5 F. Seventh Cause of Action

6 Plaintiff alleges that defendant Tilton, Evans, Neotti, Reyes, Baker, Variz,
7 Grannis, and Does 1-4 obstructed his administrative grievance concerning the decision to transfer
8 him. (Compl., Grievance dated September 26, 2005.) In a screening notice attached to his
9 complaint, dated September 27, 2005, plaintiff was advised to resubmit a new 602 form and to
10 complete only sections “A & B.” (Doc. No. 1 at 63.) Plaintiff re-submitted the 602 form and it
11 was stamped received on October 11, 2005. (Doc. No. 1 at 59.) In a screening notice, dated
12 January 26, 2006, plaintiff was advised to attach the “CDC 128-G” and “CSR Endorsement
13 Chrono” forms. (Doc. No. 1 at 55.) Finally, in a letter dated February 15, 2006, plaintiff was
14 informed by prison officials that too much time had lapsed “between when the action or decision
15 occurred and when you filed your appeal with no explanation of why you did not or could not file
16 in a timely fashion.” (Doc. No. 1 at 54.)

17 Plaintiff claims that as a result of defendants handling of this grievance his rights
18 protected by the First, Fifth, Sixth, Eighth, and Fourteenth Amendments and state law to: (1)
19 freedom of speech, (2) petition the government for redress of grievances, (3) access the courts,
20 (4) a “meaningful appeal,” (5) due process, (6) equal protection, (7) be free from cruel and
21 unusual punishment, (8) be free from “cruel and unjust hardship,” (9) have “CDCR personnel
22 follow CDCR regulations,” and (10) be free from “intentional and negligent infliction or mental
23 anguish and emotional distress . . . and deliberate indifference” were all violated.

24 III. Discussion

25 For the reasons explained below, the court finds that plaintiff’s claims are legally
26 frivolous or fail to state cognizable claims.

1 A. Personal and Legal Property

2 In his first and second causes of action, plaintiff alleges that defendants deprived
3 him of access to his personal and legal property for approximately three to five weeks. A
4 temporary loss of access to his personal property does not state a cognizable Fourteenth
5 Amendment due process claim. There are no regulations that establish that plaintiff is entitled to
6 have his personal property at all times. In fact, under California Code of Regulations, title 15, §
7 3192, “[a]n inmate’s right to inherit, own, sell or convey real and/or personal property does not
8 include the right to possess such property within the institutions/facilities of the department.” A
9 temporary deprivation of property such as that alleged by plaintiff here is not an atypical and
10 significant hardship in relation to the ordinary incidents of prison life. See Barnett v. Centoni, 31
11 F.3d 813, 816 (9th Cir. 1994) (no due process violation where an inmate’s property was taken in
12 connection with his reclassification to a status in which he was not authorized to possess the
13 additional property); Chhoun v. Woodford, No. C 03 3219 SI, 2005 WL 1910930, at *6-9 (N.D.
14 Cal. Aug. 10, 2005) (concluding that the temporary deprivation of personal property did not
15 violate the prisoner’s due process rights); Owens v. Ayers, No. C 01-3720 SI (PR), 2002 WL
16 73226, at *2 (N.D. Cal. Jan. 15, 2002).

17 As to plaintiff’s legal property, a temporary deprivation of one’s access to such
18 property also does not rise to a constitutional deprivation. Vigliotto v. Terry, 873 F.2d 1201,
19 1202-03 (9th Cir. 1989). Moreover, plaintiff has not alleged that the brief seizure of these
20 materials actually deprived him of his right of access to the courts on any occasion. Sands v.
21 Lewis, 886 F.2d 1166, 1171 (9th Cir. 1989) (requiring an allegation of an actual injury).
22 Therefore, plaintiff has failed to state a cognizable claim under the First or Fourteenth
23 Amendments based upon the alleged brief deprivation of access to his legal materials.

24 In addition, plaintiff has failed to state a cognizable equal protection claim. The
25 Fourth Amendment does not proscribe unreasonable searches or seizures of property in prison.
26 See Hudson v. Palmer, 468 U.S. 517, 528 n.8 (1984). The Fifth Amendment does not apply here

1 because its due process clause only applies to the federal government, and plaintiff's action
2 involves alleged actions taken by state prison officials. See Bingue v. Prunchak, 512 F.3d 1169,
3 1174 (9th Cir.2008). The Sixth Amendment does not provide the basis for a cognizable claim of
4 this nature. The Eighth Amendment prohibits cruel and unusual punishment and plaintiff's
5 alleged separation from his personal property for three to five week does not rise to the level of
6 an Eighth Amendment violation. See Owens v. Ayers, 2002 WL at *3 ("It belittles the Eighth
7 Amendment to suggest that a three-month ban on the possession of personal property . . .
8 amounts to cruel and unusual punishment."). The Fourteenth Amendment's equal protection
9 clause ensures that "all persons similarly situated should be treated alike." City of Cleburne v.
10 Cleburne Living Ctr., Inc., 473 U.S. 432, 439 (1985). Here, plaintiff does not allege that he was
11 treated differently from similarly situated inmates. In fact, plaintiff has alleged in his complaint
12 that twenty-seven inmates who were on the same bus with him also had their personal property
13 withheld pending their transfer to another prison.

14 B. Classification and Transfer

15 In his third and fourth claims, plaintiff disputes the manner in which his
16 classification was conducted and the validity of his transfer to another state prison. Plaintiff has
17 failed to state a cognizable due process claim in this regard. See Meachum v. Fano, 427 U.S.
18 215, 224-25 (1976) (holding that no liberty interest protected by the Due Process Clause is
19 implicated in a prison's reclassification and transfer decisions). In addition, based on these
20 allegations plaintiff has failed to state a cognizable Fifth or Eighth Amendment claims. See
21 Hernandez v. Johnston, 833 F.2d 1316, 1318 (9th Cir. 1987) ("[A] prisoner has no constitutional
22 right to a particular classification status.") (internal quotation marks omitted). As to plaintiff's
23 equal protection claim, as noted above, plaintiff has alleged that twenty-seven other inmates, "if
24 not hundreds[] of others" were subjected to, what he considers, "invalid classification
25 proceedings[.]" (Compl. at 12-13.)

26 ////

1 C. Grievance Process

2 In his sixth and seventh claims, plaintiff contends that his inmate grievances were
3 not properly processed, and that he did not receive a response to his grievance or the response
4 was untimely. However, prisoners do not have a “separate constitutional entitlement to a specific
5 prison grievance procedure.” Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (citing Mann
6 v. Adams, 855 F.2d 639, 640 (9th Cir. 1988)). Even the non-existence of, or the failure of prison
7 officials to properly implement an administrative appeals process within the prison system does
8 not raise constitutional concerns. Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988); see also,
9 Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993); Azeez v. DeRobertis, 568 F. Supp. 8, 10
10 (N.D. Ill. 1982) (“[A prison] grievance procedure is a procedural right only, it does not confer
11 any substantive right upon the inmates. Hence, it does not give rise to a protected liberty interest
12 requiring the procedural protections envisioned by the Fourteenth Amendment”); Wright v.
13 Shannon, No. CIV F-05-1485 LJO YNP PC, 2010 WL 445203 at *5 (E.D. Cal. Feb. 2, 2010)
14 (plaintiff’s allegations that prison officials denied or ignored his inmate appeals failed to state a
15 cognizable claim under the First Amendment); Towner v. Knowles, No. CIV S-08-2833 LKK
16 EFB P, 2009 WL 4281999 at *2 (E.D. Cal. Nov. 20, 2009) (plaintiff’s allegations that prison
17 officials screened out his inmate appeals without any basis failed to indicate a deprivation of
18 federal rights); Walker v. Vazquez, No. CIV F-09-0931 YNP PC, 2009 WL 5088788 at *6-7
19 (E.D. Cal. Dec. 17, 2009) (plaintiff’s allegations that prison officials failed to timely process his
20 inmate appeals failed to a state cognizable under the Fourteenth Amendment); Williams v. Cate,
21 No. F-09-0468 OWW YNP PC, 2009 WL 3789597 at *6 (E.D. Cal. Nov. 10, 2009) (“Plaintiff
22 has no protected liberty interest in the vindication of his administrative claims.”).

23 Therefore, plaintiff has failed to state a cognizable civil rights claim based on his
24 allegation that his inmate grievances were not properly processed or responded to in a timely
25 fashion.

26 ////

1 D. State Law Claims

2 The district court may decline to exercise supplemental jurisdiction over a claim
3 “if the district court has dismissed all claims over which it has original jurisdiction.” 28 U.S.C. §
4 1367(c)(3). See also Binder v. Gillespie, 184 F.3d 1059, 1066 (9th Cir. 1999) (citing Fang v.
5 United States, 140 F.3d 1238, 1241 (9th Cir. 1998) and Voight v. Savell, 70 F.3d 1552, 1565 (9th
6 Cir. 1995)). If these findings and recommendations are adopted, the federal claims over which
7 this court has original jurisdiction will be dismissed and the balance of relevant factors points
8 toward declining to exercise jurisdiction over any remaining state law claims. See Gini v. Las
9 Vegas Metro. Police Dep’t, 40 F.3d 1041, 1046 (9th Cir. 1994); Imagineering, Inc. v. Kiewit Pac.
10 Co., 976 F.2d 1303, 1309 (9th Cir. 1992). To the extent that plaintiff is asserting any claims
11 based upon alleged violations of state law, this court should decline to exercise supplemental
12 jurisdiction over those claims. Therefore, the court will also recommends that plaintiff’s state
13 law claims be dismissed without prejudice to its refiling in state court.

14 E. Leave to Amend

15 The undersigned has carefully considered whether plaintiff may amend his
16 complaint to state any claim upon which relief can be granted. “Valid reasons for denying leave
17 to amend include undue delay, bad faith, prejudice, and futility.” California Architectural Bldg.
18 Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir.1988). See also Klamath-Lake
19 Pharm. Ass’n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir.1983) (holding that,
20 while leave to amend shall be freely given, the court need not allow futile amendments). Here,
21 plaintiff’s claims are clearly not cognizable and the granting of leave to amend would therefore be
22 futile. Accordingly, the court will recommend that the dismissal be without leave to amend.

23 IV. Motion for Appointment of Counsel

24 Plaintiff has requested the appointment of counsel. The United States Supreme
25 Court has ruled that district courts lack authority to require counsel to represent indigent
26 prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In

1 certain exceptional circumstances, the court may request the voluntary assistance of counsel
2 pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991);
3 Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court
4 does not find the required exceptional circumstances. Plaintiff's request for the appointment of
5 counsel will therefore be denied.

6 _____ CONCLUSION

7 In accordance with the above, IT IS HEREBY ORDERED that:

8 1. Plaintiff's September 17, 2009 application to proceed in forma pauperis (Doc.
9 No. 2) is granted.

10 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.
11 The fee shall be collected and paid in accordance with this court's order to the Director of the
12 California Department of Corrections and Rehabilitation filed concurrently herewith.

13 3. Plaintiff's September 22, 2009 and October 8, 2009 applications to proceed in
14 forma pauperis (Doc. Nos. 8 & 14) will be denied as unnecessary.

15 4. Plaintiff's September 22, 2009 motion for the appointment of counsel (Doc.
16 No. 5) is denied.

17 5. The Clerk of the Court is directed to randomly assign this case to a District
18 Judge.

19 Also, IT IS HEREBY RECOMMENDED that:

20 1. The complaint be dismissed without leave to amend for failure to state a
21 cognizable claim;

22 2. This action be dismissed; and

23 3. Plaintiff's state law claims be dismissed without prejudice to their refileing in
24 state court.

25 These findings and recommendations are submitted to the United States District
26 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-

1 one days after being served with these findings and recommendations, plaintiff may file written
2 objections with the court. The document should be captioned "Objections to Magistrate Judge's
3 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
4 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
5 F.2d 1153 (9th Cir. 1991).

6 DATED: June 26, 2010.

7
8 
9 _____
DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

10 DAD:1
11 cumm2702.fsc

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26