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

ROBERT P. BENYAMINI,

Plaintiff,

No. CIV S-10-0101 KJM GGH P

vs.

V. OGBEIDE, et al.,

Defendants.

ORDER

_____ /

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 23, 2011, the magistrate judge filed findings and recommendations, which were served on the parties and which contained notice to the parties that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff filed belated objections to the findings and recommendations. Although the court in its discretion could choose to disregard the objections, the court has considered them before entering this order.

In accordance with the provisions of 28 U.S.C. 636 (b)(1)(C) and Local Rule 304, the court has conducted a *de novo* review of this case. Having carefully reviewed the file, the

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1 court finds the findings and recommendations to be supported by the record and by the proper
2 analysis.

3 Plaintiff also has filed a motion for a “permanent stay,” in light of an impending
4 transfer to solitary housing. (ECF 40.) Defendants oppose the stay. (ECF 41.) Upon review of
5 the parties’ briefing, and consideration of the applicable law, the court declines to impose a stay.

6 Accordingly, IT IS HEREBY ORDERED that:

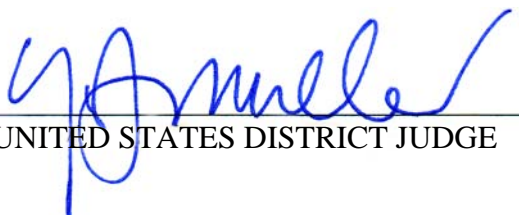
7 1. The findings and recommendations filed May 23, 2011 (ECF 38), are adopted
8 in full.

9 2. The unserved defendant Byrd is dismissed without prejudice from this action,
10 *see* Fed. R. Civ. P. 4(m), for the reasons set forth in the magistrate judge’s Order filed on January
11 28, 2011 (ECF 33), and plaintiff having failed to show good cause in response to that order as to
12 why defendant Byrd should not be dismissed.

13 3. Defendant Baker’s November 23, 2010 motion for an order revoking
14 plaintiff’s in forma pauperis status (ECF 24) is granted and plaintiff is ordered to pay the filing
15 fee in full within 28 days, failing which, this case will be dismissed.

16 4. Plaintiff’s motion for a stay (ECF 40) is denied.

17 DATED: September 6, 2011.

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20 UNITED STATES DISTRICT JUDGE
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