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

J.C.X. SIMON,

Plaintiff,

No. CIV S-10-0980 WBS EFB P

vs.

S. CERVANTES, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____/

J.C.X. Simon, an inmate confined at California State Prison - Solano, filed this pro se civil rights action under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

On September 15, 2010, the court dismissed plaintiff's complaint with leave to amend. Dckt. No. 7. Specifically, the court found that plaintiff had not stated cognizable claims under the Americans with Disabilities Act or the First Amendment. On November 9, 2010, plaintiff filed an amended complaint. The amended complaint fails to remedy the original complaint's deficiencies. Specifically, plaintiff has not stated facts showing his exclusion from a program, service, or activity and has not stated facts establishing a violation of the First Amendment. Plaintiff is apparently unable to do so.

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1 Accordingly, it is hereby RECOMMENDED that this action be dismissed without further
2 leave to amend for plaintiff's failure to state a claim. *See* 28 U.S.C. § 1915A; *see also Lopez v.*
3 *Smith*, 203 F.3d 1122, 1128 (9th Cir. 2000) (indigent prisoner proceeding without counsel must
4 be given leave to file amended complaint unless the court can rule out any possibility that the
5 plaintiff could state a claim).

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

13 Dated: April 5, 2011.

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15 EDMUND F. BRENNAN
16 UNITED STATES MAGISTRATE JUDGE
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