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

BRIAN DARNELL EDWARDS,

Plaintiff,

No. 2:10-cv-3461 WBS KJN P

vs.

HIGH DESERT STATE PRISON, et al.,

Defendants.

ORDER

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Plaintiff is a state prisoner proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. On March 25, 2011, the undersigned issued an order addressing plaintiff's amended complaint. The undersigned found that the amended complaint stated a colorable claim for relief against defendants Turner-Gambery, Cheney, Mitchell and Swingle. The undersigned found that the amended complaint did not state a colorable claim for relief against defendant Warden McDonald on grounds that plaintiff failed to link this defendant to the alleged deprivations.

The March 25, 2011 order stated that plaintiff could proceed to serve defendants Turner-Gambery, Cheney, Mitchell and Swingle, or he could delay serving any defendant and attempt to state a cognizable claim against defendant McDonald by filing a second amended complaint. The March 25, 2011 order further stated that if plaintiff returned the forms necessary

1 for service of defendants Turner-Gambery, Cheney, Mitchell and Swingle, it would construe  
2 plaintiff's election as consent to dismissal of all claims against defendant McDonald.


3 On April 22, 2011, plaintiff filed the forms necessary for service of defendants  
4 Turner-Gambery, Cheney, Mitchell and Swingle. Accordingly, on May 5, 2011, the undersigned  
5 ordered the U.S. Marshal to serve these defendants and recommended dismissal of defendant  
6 McDonald.

7 On June 2, 2011, plaintiff filed objections to the findings and recommendations.  
8 Plaintiff alleges that he can state a colorable claim against defendant McDonald. Accordingly,  
9 the May 5, 2011 findings and recommendations are vacated. Plaintiff is granted thirty days to  
10 file a second amended complaint. The second amended complaint must include all claims  
11 against all defendants.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. The May 5, 2011 findings and recommendations (Dkt. No. 17) are vacated;  
14 2. Plaintiff is granted thirty days from the date of this order to file a second  
15 amended complaint; if plaintiff does not file a second amended complaint, the court will again  
16 recommend that defendant McDonald be dismissed.

17 DATED: June 7, 2011

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20 KENDALL J. NEWMAN  
21 UNITED STATES MAGISTRATE JUDGE

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