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

RONALD DENNIS BLAMEY,

Plaintiff,

No. CIV S-10-3470 GEB EFB P

vs.

A. ALLEN, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. By order filed March 18, 2011, the court found that plaintiff had stated a cognizable claim against defendant Allen for denial of access to the courts, and informed plaintiff he could proceed against defendant Allen only on that claim or file an amended complaint to attempt to state additional cognizable claims against defendant Allen and defendant Swarthout. The court also informed plaintiff that it would consider plaintiff's decision to proceed only as to defendant Allen on the access to courts claim as consent to the dismissal of his claim against defendant Allen for violation of the Eighth Amendment and all of his claims against defendant Swarthout. On March 18 and May 17, 2011, plaintiff returned documents for service against defendant Allen, electing not to file an amended complaint to attempt to state a cognizable Eighth Amendment claim against defendant Allen or cognizable claims against

1 defendant Swarthout.

2 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's Eighth Amendment
3 claim against defendant Allen and all of plaintiff's claims against defendant Swarthout be
4 dismissed without prejudice.

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

12 Dated: May 31, 2011.

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14 EDMUND F. BRENNAN
15 UNITED STATES MAGISTRATE JUDGE
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