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| 8  | IN THE UNITED STATES DISTRICT COURT  |
| 9  | FOR THE EASTERN DISTRICT OF CALIFORNIA   |
| 10 | ANTHONY JONES,   |
| 11 | Plaintiff, No. CIV S-11-0192 MCE EFB P   |
| 12 | VS.  |
| 13 | TOFT, et al.,  |
| 14 | Defendants. <u>FINDINGS AND RECOMMENDATIONS</u>  |
| 15 | /  |
| 16 | Plaintiff is a state prisoner proceeding without counsel in an action brought under 42               |
| 17 | U.S.C. § 1983. By order filed March 15, 2011, the court found that plaintiff had stated              |
| 18 | cognizable Eighth Amendment claims against defendants Toft and Blum and informed plaintiff           |
| 19 | he could proceed against those defendants on the Eighth Amendment claims only or file an             |
| 20 | amended complaint to attempt to state additional cognizable claims against defendants Toft and       |
| 21 | Blum for violation of plaintiff's equal protection rights. The court also informed plaintiff that it |
| 22 | would consider plaintiff's decision to proceed only as to the Eighth Amendment claims against        |
| 23 | defendants Toft and Blum as consent to the dismissal of his equal protection claims against those    |
| 24 | defendants. On March 31, 2011, plaintiff returned documents for service against defendants Toft      |
| 25 | and Blum, electing not to file an amended complaint to attempt to state cognizable equal             |
| 26 | protection claims against those defendants.  |

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Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's equal protection claims against defendants Toft and Walker be dismissed without prejudice.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections within the specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). Dated: April 14, 2011.

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EDMUND F. BRÈNNAN UNITED STATES MAGISTRATE JUDGE