

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MICHAEL ANTHONY VICTORY,

Plaintiff,

v.

SCHWARZENEGGER, et al.,

Defendants.

CASE NO. 1:05-cv-01578-LJO-DLB (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
IN PART AND DENYING IN PART
DEFENDANTS' MOTION TO DISMISS

(Docs. 43, 44, 49, 65)

_____ /

Plaintiff Michael Anthony Victory ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 16, 2009, the Magistrate Judge filed a [Findings and Recommendations](#) herein which was served on plaintiff and which contained notice to the parties that any objection to the Findings and Recommendations was to be filed within thirty days. Neither party filed a timely Objection to the Findings and Recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis.

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The [Findings and Recommendations](#), filed September 16, 2009, is adopted in full;
- 3 2. Defendant Neubarth's [motion to dismiss](#) for failure to state a claim, filed August
- 4 22, 2008, is GRANTED in part with regards to injunctive relief and DENIED in
- 5 party with regards to qualified immunity;
- 6 3. Defendants Ortiz, Bresler, Smith, and Barber's [motion to dismiss](#) for failure to
- 7 exhaust administrative remedies, filed August 22, 2008, is GRANTED in part and
- 8 DENIED in part as stated in the September 16, 2009 Findings and
- 9 Recommendations; and
- 10 4. Defendants Kushner, Salazar, and Sacks's [motion to dismiss](#) for failure to exhaust
- 11 administrative remedies, filed September 18, 2008, is GRANTED in part and
- 12 DENIED in part as stated in the September 16, 2009 Findings and
- 13 Recommendations.

14

15 IT IS SO ORDERED.

16 Dated: January 28, 2010

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE