

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

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

MICHAEL GONZALES,  
Plaintiff,

vs.

PRICE, et al.,  
Defendants.

1:07-cv-01391-AWI-SMS-PC

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS ACTION  
PROCEED ONLY AGAINST DEFENDANTS  
PRICE, FRESCURA, VIKJORD, PINZON,  
AND M. CASTRO, ON PLAINTIFF’S  
FIRST AMENDMENT CLAIMS, AND ALL  
OTHER CLAIMS AND DEFENDANTS BE  
DISMISSED

OBJECTIONS, IF ANY, DUE IN 30 DAYS

\_\_\_\_\_ /

Plaintiff Michael Gonzales (“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 case now proceeds on the original complaint filed by Plaintiff on September 21, 2007. (Doc. 1.) The complaint names Price, K. Frescura, B.S. Vikjord, M. Castro, Warden Darrel Adams, R. Pinzon, E. Castro, J. Munoz, and Kelley as defendants, and alleges claims for a number of acts including retaliation, involuntarily medication of his meals, theft of his novels and drawings, refusal to mail his correspondence, and denial of access to showers.

The Court screened Plaintiff’s complaint pursuant to 28 U.S.C. § 1915A and found that it states cognizable claims for relief under section 1983 against defendants Price, K. Frescura, B.S. Vikjord, M. Castro, and R. Pinzon, for retaliation and for refusal to mail his correspondence, in violation of the First

1 Amendment. On December 2, 2009, Plaintiff was given leave to either file a first amended complaint,  
2 or in the alternative, to notify the Court that he does not wish to file a first amended complaint and  
3 instead wishes to proceed only on the claims identified by the Court as viable/cognizable in the Court's  
4 order. (Doc. 8.) On February 16, 2010, Plaintiff filed written notice to the Court that he wishes to  
5 proceed only on the claims found cognizable by the Court. (Doc. 10.)

6 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 7 1. This action proceed only against defendants Price, K. Frescura, B.S. Vikjord, M. Castro,  
8 and R. Pinzon, for retaliation and for refusal to mail his correspondence, in violation of  
9 the First Amendment;
- 10 2. All remaining claims and defendants be dismissed from this action;
- 11 3. Plaintiff's claims for theft of personal property, verbal harassment, forced medication,  
12 denial of showers, conspiracy, supervisory liability, and improper inmate appeals be  
13 dismissed for failure to state a claim upon which relief may be granted under section  
14 1983; and
- 15 4. Defendants E. Castro, J. Munoz, Warden Darrel Adams, and Kelley be dismissed from  
16 this action based on Plaintiff's failure to state any claims upon which relief may be  
17 granted against them.

18 These Findings and Recommendations will be submitted to the United States District Judge  
19 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days  
20 after being served with these Findings and Recommendations, Plaintiff may file written objections with  
21 the Court. The document should be captioned "Objections to Magistrate Judge's Findings and  
22 Recommendations." Plaintiff is advised that failure to file objections within the specified time may  
23 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24  
25 IT IS SO ORDERED.

26 **Dated: February 18, 2010** \_\_\_\_\_

\_\_\_\_\_  
**/s/ Sandra M. Snyder**  
UNITED STATES MAGISTRATE JUDGE