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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GERALD A. WEST,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS, et al.,

Defendants.

CASE NO: 1:09-CV-01277-LJO-GBC (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
CERTAIN DEFENDANTS AND DENIAL OF
PLAINTIFF’S DISCOVERY MOTIONS FOR
DISMISSED DEFENDANT

Docs. 51, 52, 57

On July 22, 2009, Plaintiff Gerald A. West, a federal prisoner proceeding pro se and in forma pauperis, filed a complaint against Defendants employed by the United States Penitentiary in Atwater, California (“USP Atwater”),¹ pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Doc. 1. On August 27, 2010, Plaintiff filed a third amended complaint, naming only Doe Defendants. Doc. 25. On February 15, 2011, the Court dismissed certain claims and directed the action to proceed against Doe Defendants for Eighth Amendment failure to protect. Doc. 28. On May 3, 2011, the Court granted Plaintiff’s motion to conduct limited discovery, for the sole purpose of identifying Doe Defendants, and ordered Plaintiff to identify Doe Defendants within 120 days. Doc. 33. On July 26, 2011, the Court directed service of a subpoena to the warden of USP Atwater, for the limited discovery of identifying Doe Defendants. Doc. 45. On August 25, 2011, the Bureau of Prisons (“BOP”) submitted a response to Plaintiff’s subpoena. Doc. 49. On March 7, 2012, Plaintiff filed his fourth amended complaint,

¹ Plaintiff is currently incarcerated at the United States Penitentiary in Lewisburg, Pennsylvania.

1 identifying two of the three Doe Defendants. Doc. 56. The matter was referred to a United States
2 Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

3 On March 15, 2012, the Magistrate Judge issued [Findings and Recommendations](#),
4 recommending dismissal of certain defendants and denial of Plaintiff's discovery motions for
5 dismissed Doe defendant. Doc. 57. On April 2, 2012, Plaintiff filed [Objections](#). Doc. 58.

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

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. This action proceed on Plaintiff's fourth amended complaint, filed March 7, 2012,
11 against Defendant McNease, for failure to protect in violation of the Eighth
12 Amendment;
- 13 2. Plaintiff's claim against Doe Defendant 3 is DISMISSED, without prejudice, for
14 failure to serve Doe Defendant 3 within the 120-day period prescribed by Rule 4(m)
15 of the Federal Rules of Civil Procedure;
- 16 3. Plaintiff's motion for further discovery regarding Doe Defendant 3 is DENIED;
- 17 4. Plaintiff's motion for additional subpoena regarding Doe Defendant 3 is DENIED;
- 18 5. Plaintiff's claims against Defendants Zaragoza, Federal Bureau of Prisons, and the
19 United States are DISMISSED, with prejudice, for failure to state a claim upon which
20 relief may be granted under 42 U.S.C. § 1983; and
- 21 6. This matter is referred back to the Magistrate Judge to initiate service of process
22 proceedings.

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25 IT IS SO ORDERED.

26 **Dated:** April 19, 2012

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