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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BENITO REYES,

Plaintiff,

vs.

ROSE MARTINEZ and

CHINYERE NYENKE,

Defendants.

1:11-cv-00362-LJO-GSA-PC

ORDER FOLLOWING REMAND OF  
CASE FROM NINTH CIRCUIT AFTER  
INDICATIVE RULING  
(ECF No. 55.)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS  
(ECF No. 47.)

ORDER GRANTING DEFENDANTS'  
AMENDED MOTION FOR SUMMARY  
JUDGMENT  
(ECF No. 37.)

ORDER ENTERING SUMMARY  
JUDGMENT IN FAVOR OF DEFENDANTS  
MARTINEZ AND NYENKE

ORDER FOR CLERK TO CLOSE CASE

Benito Reyes (“Plaintiff”) is a state prisoner proceeding *pro se* with 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 1, 2015, findings and recommendations were entered, recommending that Defendants’ amended motion for summary judgment be granted. (ECF No. 47.) The

1 parties were granted thirty days in which to file objections to the findings and  
2 recommendations. (Id.) On September 28, 2015, the Court adopted the findings and  
3 recommendations, granting summary judgment in favor of Defendants and closing the case.  
4 (ECF No. 48.) Also on September 28, 2015, after the judgment had been entered, Plaintiff's  
5 objections to the findings and recommendations were filed by the Court. (ECF No. 50.)

6 On October 30, 2015, Plaintiff filed a notice of appeal to the Ninth Circuit Court of  
7 Appeals. (ECF No. 51.) In the appeal, Plaintiff asserts that he filed timely objections to the  
8 findings and recommendations, but the District Judge prematurely adopted the findings and  
9 recommendations on September 28, 2015, without considering Plaintiff's objections. Plaintiff  
10 speculates that the District Judge mistakenly believed the parties were only given twenty days  
11 to file objections, and issued the final order before the thirty-day deadline had expired.

12 On November 12, 2015, this Court issued an order, requesting remand of this case by  
13 the Ninth Circuit Court of Appeals pursuant to Federal Rule of Appellate Procedure 12.1, based  
14 on the Court's discovery that the Court had entered judgment and closed the case prematurely.  
15 The Court sought to vacate the judgment under Rule 60(b) of the Federal Rules of Civil  
16 Procedure, reopen the case, and reconsider Defendants' amended motion for summary  
17 judgment, taking into consideration Plaintiff's timely filed objections to the findings and  
18 recommendations.

19 On December 7, 2015, the Court of Appeals granted the request for remand after the  
20 indicative ruling, remanding the case to the district court for the purpose of granting relief from  
21 the judgment. (ECF No. 55.) On December 30, 2015, the Court of Appeals issued its formal  
22 mandate. (ECF No. 57.)

23 This case has been reopened. In accordance with the provisions of 28 U.S.C. § 636  
24 (b)(1)(B) and Local Rule 304, this Court has conducted a *de novo* review of this case. Having  
25 carefully reviewed the entire file, including Plaintiff's timely filed objections, the Court finds  
26 the findings and recommendations to be supported by the record and proper analysis.

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1 Accordingly, THE COURT HEREBY ORDERS that:

- 2 1. The Findings and Recommendations issued by the Magistrate Judge on  
3 September 1, 2015, are ADOPTED IN FULL;
- 4 2. Defendants' amended motion for summary judgment, filed on January 22, 2015,  
5 is GRANTED; and
- 6 3. The Clerk is directed to CLOSE this case and enter judgment in favor of  
7 defendants Martinez and Nyenke.

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9 IT IS SO ORDERED.

10 Dated: April 1, 2016

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