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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WALTER LANGSTON,
Plaintiff,
v.
SERGEANT SHARMA,
Defendants.

No. 2:15-cv-1437 GEB KJN P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 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 November 16, 2016, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff filed objections to the findings and recommendations.¹ Defendant filed a reply.

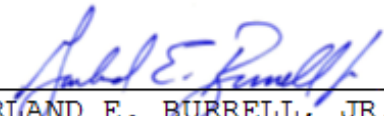
¹ As noted by defendants, in the objections, plaintiff again changed his factual allegations in response to the findings and recommendations. A district court “has discretion, but is not required,” to consider evidence and claims raised for the first time in the objection to a magistrate judge’s report. United States v. Howell, 231 F.3d 615, 621 (9th Cir. 2000); see also Brown v. Roe, 279 F.3d 742, 745 (9th Cir. 2002). The district court must, however, “actually exercise its discretion” and not merely accept or deny the new claims. Howell, 231 F.3d at 622. The court declines to accept or consider plaintiff’s new factual allegations for the reasons set forth in the findings and recommendations. (ECF No. 38 at 5-6.)

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
2 court has conducted a de novo review of this case. Having carefully reviewed the entire file, the
3 court finds the findings and recommendations to be supported by the record and by proper
4 analysis.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. The findings and recommendations filed November 16, 2016, are adopted in full;
- 7 2. Defendants' motion to revoke plaintiff's in forma pauperis status (ECF No. 34) is
8 granted;
- 9 3. Plaintiff's in forma pauperis status (ECF No. 4) is revoked; and
- 10 4. Plaintiff is ordered to pay the \$400.00 filing fee within thirty days from the date of this
11 order.

12 Dated: December 13, 2016

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16 GARIAND E. BURRELL, JR.
17 Senior United States District Judge
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