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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARK DAVID KELLER,

Plaintiff,

v.

B. MAGANA, et al.,

Defendants.

Case No. CV 12-5036-CJC (JEM)

ORDER ACCEPTING FINDINGS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

On February 11, 2014, the United States Magistrate Judge issued a Report and Recommendation, recommending that: (1) Defendants' Motion to Dismiss be granted; (2) Plaintiff's Motion for Leave to Amend be denied; (3) Plaintiff's Motion to Strike be denied; (4) Plaintiff's Motion to Stay be denied; (5) Plaintiff's claims be dismissed without prejudice; and (6) Judgment be entered dismissing this action without prejudice. Thereafter, on February 26, 2014, Plaintiff filed Objections to the Report and Recommendation ("Objections").

To the extent Plaintiff argues in his Objections that the Prison Litigation Reform Act "may in its current form be unconstitutional by barring meaningful access to the Courts by prisoners" (Objections at 11), the Court declines to consider this belatedly-asserted claim that was not included in the First Amended Complaint or in the Opposition to Defendants' Motion to Dismiss. A district court "has the discretion to decline to consider arguments presented for the first time

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in a party's objections to a Magistrate Judge's Findings and Recommendation." Aleck v. United States, 2005 WL 2709502, at *1 (D. Or. 2005) (citing Jones v. Blanas, 393 F.3d 918, 935 (9th Cir. 2004) and United States v. Howell, 231 F.3d 615, 621-22 (9th Cir. 2000)). "[S]uch discretion has been exercised in this regard, especially when declining to address a new argument first raised in the objections." Id. (citing Howell, 231 F.3d at 621-22). Plaintiff's new argument was available to him at the time he filed his First Amended Complaint and/or the Opposition to the Motion to Dismiss, and Plaintiff offers no explanation for the failure to raise it earlier. (See, generally, Objections at 1-15.) Under the circumstances, the Court will exercise its discretion and decline to consider the new argument Plaintiff raised in his Objections. "Such a policy is reasonable since the referral mechanism is intended to help ease the heavy workloads of the district courts and to aid in the efficient resolution of disputes." ISM Sports, Inc. v. Lemonia Gyro & Souvlaki, Inc., 2005 WL 1861308, at *2 (E.D.N.Y. 2005); see also Howell, 231 F.3d at 622 ("To require a district court to consider evidence not previously presented to the magistrate judge would effectively nullify the magistrate judge's consideration of the matter and would not help to relieve the workload of the district court. . . . Equally important, requiring the district court to hear evidence not previously presented to the magistrate judge might encourage sandbagging.").

Plaintiff's remaining contentions in the Objections are without merit and warrant no comment.

Based on the foregoing and pursuant to 28 U.S.C. § 636, the Court has reviewed the pleadings, the records on file, and the Report and Recommendation of the United States Magistrate Judge. Plaintiff has filed Objections, and the Court has engaged in a de novo review of those portions of the Report and Recommendation to which Plaintiff has objected. The Court accepts the findings and recommendations of the Magistrate Judge.

IT IS HEREBY ORDERED that: (1) Plaintiff's Motion to Stay is DENIED; (2) Plaintiff's Motion to Strike is DENIED; (3) Defendants' Motion to Dismiss Plaintiff's First Amended Complaint is GRANTED; (4) Plaintiff's Motion for Leave to Amend is DENIED; (5) Plaintiff's

claims are dismissed without prejudice; and (6) Judgment shall be entered dismissing this action without prejudice.

IT IS SO ORDERED.

DATED: March 18, 2014

CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE