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7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
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10 JOSE VELA,

11 Plaintiff,

12 v.

13 UNITED STATES OF AMERICA,  
14 et al.,

15 Defendants.

NO. EDCV 16-2526-DMG (AGR)

ORDER ACCEPTING FINDINGS AND  
RECOMMENDATIONS OF UNITED  
STATES MAGISTRATE JUDGE

16 Pursuant to 28 U.S.C. § 636, the Court has reviewed the complaint, records on  
17 file, the Report and Recommendation of the United States Magistrate Judge  
18 (“Report”), Plaintiff’s Objections, Defendants’ Response to Objections and Plaintiffs’  
19 Supplemental and Amended Objections to Report and Recommendation  
20 (“Supplemental Objection”). Further, the Court has engaged in a *de novo* review of  
21 those portions of the Report to which Plaintiff has objected. The Court accepts the  
22 findings and recommendation of the Magistrate Judge.  
23

24 In his objections, Plaintiff requests a jury trial. A Federal Tort Claims Act  
25 (“FTCA”) action against the United States is tried by the court without a jury. 28  
26 U.S.C. § 2402; *Osburn v. Haley*, 549 U.S. 225, 252 (2007) (“actions against the  
27 United States ordinarily ‘shall be tried by the court without a jury’”); *Nurse v. United*  
28 *States*, 226 F.3d 996, 1004 (9th Cir. 2000); *In re Consolidated U.S. Atmospheric*  
*Testing Litig.*, 820 F.2d 982, 992 n.4 (9th Cir. 1987) (“The FTCA specifically provides

1 that in tort actions against the United States, trials shall be to the court without a jury.  
2 28 U.S.C. § 2402.”). In his Supplemental Objections, Plaintiff acknowledges that  
3 FTCA claims are tried to the court, “not by jury.” (Supp. Obj. at 1.)

4 In his objections, Plaintiff also requests punitive damages. However, punitive  
5 damages are not available in a FTCA action against the United States. 28 U.S.C. §  
6 2674; *Nurse*, 226 F.3d at 1005.

7 Plaintiff is further advised that he cannot amend his complaint by adding  
8 allegations or claims in his Objections or Supplemental Objections. Plaintiff must file  
9 a motion for leave to amend the First Amended Complaint and attach a proposed  
10 Second Amended Complaint. Fed. R. Civ. P. 15.

11 IT IS ORDERED that Defendants’ motion to dismiss (Dkt. No. 77) is  
12 GRANTED IN PART and DENIED IN PART as follows:

13 (1) Defendants’ motion to dismiss all defendants except the United States is  
14 GRANTED and, therefore, Defendants Chatman’s and Dorethy’s motion to dismiss is  
15 DENIED AS MOOT (Dkt. No. 97);

16 (2) Defendants’ motion to reduce Plaintiff’s request for damages to \$250,000 is  
17 GRANTED WITH LEAVE TO AMEND;

18 (3) Defendants’ motion to dismiss unexhausted FTCA claims based on conduct  
19 by BOP personnel other than Salsidio is GRANTED WITHOUT PREJUDICE to  
20 Plaintiff’s ability to file a motion for leave to amend the complaint after he exhausts  
21 his administrative remedies. The Court, however, expresses no view as to the merits  
22 of such a motion; and

23 (4) Defendants’ motion to dismiss the FTCA claims in all other respects is  
24 DENIED.

25 IT IS FURTHER ORDERED that Defendant United States of America shall file  
26 an answer to the First Amended Complaint within 30 days after the entry of this  
27 order.

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1 Plaintiff's pending motions (Dkt. Nos. 100 and 101) are referred to the  
2 Magistrate Judge.

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4 DATED: August 30, 2018

  
DOLLY M. GEE  
United States District Judge

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