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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GILBERT COLON,

1:07-cv-01023-AWI-SMS-PC

Plaintiff,

ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS
(Doc. 18.)

vs.

TILTON, et al.,

ORDER FOR ACTION TO PROCEED ONLY ON
PLAINTIFF'S FOURTEENTH AMENDMENT
CLAIMS, AND DISMISSING PLAINTIFF'S
EIGHTH AMENDMENT CLAIMS

Defendants.

_____ /

Gilbert Colon (“plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint commencing this action on July 18, 2008. (Doc. 1.) On February 24, 2009, plaintiff filed the First Amended Complaint upon which this case now proceeds. (Doc. 14.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On November 19, 2009, findings and recommendations were entered, recommending that this action proceed on the First Amended Complaint, on plaintiff’s Fourteenth Amendment claims only, against defendants Assistant Warden M. Sullivan, Captain M. Martin, J. Tennison (CCII), M. Cooper (CCII), and S. Hay (CCI), and that plaintiff’s Eighth Amendment claims be dismissed.¹ Plaintiff was provided an opportunity to file objections to the findings and

¹Defendants James E. Tilton, I. D. Clay, W. Duncan, and M. Martinez were named by plaintiff in the original complaint but omitted by plaintiff in the First Amended Complaint, and these defendants are therefore dismissed from this action. (Docs. 1, 14.)

1 recommendations within thirty days. To date, plaintiff has not filed objections or otherwise
2 responded to the findings and recommendations.

3 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 73-
4 305, this court has conducted a de novo review of this case. Having carefully reviewed the entire
5 file, the court finds the findings and recommendations to be supported by the record and proper
6 analysis.

7 Accordingly, THE COURT HEREBY ORDERS that:

- 8 1. The Findings and Recommendations issued by the Magistrate Judge on
9 November 19, 2009, are adopted in full;
- 10 2. This action now proceeds on the First Amended Complaint filed February 24,
11 2009, on plaintiff's claims for violation of his rights under the Due Process
12 Clause and the Equal Protection Clause of the Fourteenth Amendment, against
13 defendants Assistant Warden M. Sullivan, Captain M. Martin, J. Tennison
14 (CCII), M. Cooper (CCII), and S. Hay (CCI);
- 15 3. All other claims and defendants are dismissed from this action;
- 16 4. Plaintiff's claims for violation of his rights under the Eighth Amendment are
17 dismissed from this action for failure to state a claim upon which relief may
18 be granted under § 1983;
- 19 5. The Clerk is directed to add these four (4) defendants to the Court's Docket:

20 Captain M. Martin
21 J. Tennison (CCII)
22 M. Cooper (CCII)
23 S. Hay (CCI);

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6. The Clerk is directed to reflect the dismissal of these four (4) defendants on the Court's Docket:

- James E. Tilton
- I. D. Clay
- W. Duncan
- M. Martinez; and

7. The Magistrate Judge shall issue an order commencing the service process in this action.

IT IS SO ORDERED.

Dated: February 9, 2010

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE