UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DANIEL ROWE, Plaintiff, v. M. CASTRO, et al., Defendants. /	CASE NO. 1:07-cv-01150-OWW-GSA PC ORDER GRANTING MOTION TO PROCEED, DISMISSING CERTAIN CLAIMS AND DEFENDANTS, AND REFERRING MATTER BACK TO MAGISTRATE JUDGE FOR SERVICE OF PROCESS PROCEEDINGS (Docs. 11 and 12)

Plaintiff Daniel Rowe ("Plaintiff"), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on August 8, 2007. On April 29, 2008, the Court dismissed Plaintiff's complaint, with leave to amend, for failure to state a claim. 28 U.S.C. § 1915A. Plaintiff filed an amended complaint on May 22, 2008.

On January 27, 2009, the Magistrate Judge issued an order finding that the amended complaint states a claim against Defendants Castro and Frescura for retaliating against Plaintiff, in violation of the First Amendment, but does not state cognizable claims arising from the reading of Plaintiff's legal mail, from the deprivation of Plaintiff's property, or from Defendants Maldonado, Salinas, and Grannis's responses to Plaintiff's administrative grievances. 28 U.S.C. § 1915A. Plaintiff was given the option of either filing a second amended complaint curing the deficiencies in his claims or notifying the Court of his willingness to proceed only on his cognizable retaliation claim. On February 9, 2009, Plaintiff filed a motion requesting to proceed only on his cognizable claim.

Accordingly, it is HEREBY ORDERED that:

1. Plaintiff's motion to proceed is GRANTED;
2. This action for damages shall proceed on Plaintiff's amended complaint, filed May 22, 2008, against Defendants Castro and Frescura for retaliation;
3. Plaintiff's First Amendment claim arising from the reading of Plaintiff's legal mail is dismissed for failure to state a claim under section 1983;
4. Plaintiff's due process claim arising from the deprivation of his property is dismissed for failure to state a claim under section 1983;
5. Plaintiff's claim against Defendants Maldonado, Salinas, and Grannis based on their responses to his administrative grievances is dismissed for failure to state a claim under section 1983; and
6. Defendants Rodriguez, Maldonado, Salinas, and Grannis are dismissed from this action based on Plaintiff's failure to state any claims upon which relief may be granted against them under section 1983; and
7. This matter is referred back to the Magistrate Judge to initiate service of process proceedings.

IT IS SO ORDERED.

Dated: February 13, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE