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

STEVEN W. ROSE,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant.

Case No. 1:08-cv-00681 LJO JLT (PC)

ORDER VACATING FINDINGS AND
RECOMMENDATIONS

(Doc. 38)

_____ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. In its screening order filed October 27, 2010, the Court instructed Plaintiff to either file a second amended complaint curing the deficiencies in Plaintiff’s due process claim (denial of parole was not supported by “some evidence of current dangerousness”) or notify the Court of his willingness to proceed on his procedural due process claim (prison officials failed to provide him advanced notice of his February 5, 2008 parole hearing). (Doc. 26.)

On March 29, 2011, Plaintiff informed the Court that he wished to proceed only on his procedural due process claim. (Doc. 36.) Accordingly, the undersigned issued findings and recommendations on April 1, 2011, dismissing Plaintiff’s remaining claim. (Doc. 38.) Nevertheless, on April 19, 2011, Plaintiff filed objections to the findings and recommendations, stating therein, among other things, that his willingness to proceed was “initiated under duress.”

1 (Doc. 44.) Plaintiff has also filed a notice of appeal regarding a separate matter in this case.

2 (Docs. 39 & 41.)

3 Accordingly, it is **HEREBY ORDERED** that:

4 1. The findings and recommendations issued by the Court on April 1, 2011 (Doc.
5 38) are **VACATED**;

6 2. Within thirty (30) days of the date of service of this order, Plaintiff shall either file
7 a second amended complaint or notify the Court in writing of his willingness to
8 proceed on his procedural due process claim; and

9 3. Plaintiff is firmly warned that his failure to comply with this order will result in a
10 recommendation that this action be dismissed.

11 IT IS SO ORDERED.

12 Dated: April 21, 2011

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE