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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 RAUL SANCHEZ ZAVALA,

10 Plaintiff,

11 v.

12 GONZAGA,

13 Defendant.

Case No. 1:09-cv-00679-EPG (PC)

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF'S
EIGHTH AMENDED COMPLAINT BE
DISMISSED FOR FAILURE TO STATE A
CLAIM

(ECF NO. 157)

14 OBJECTIONS, IF ANY, DUE WITHIN
15 TWENTY-ONE (21) DAYS

16 ORDER DIRECTING CLERK TO ASSIGN
17 DISTRICT JUDGE

18 **I. BACKGROUND**

19 Raul Zavala ("Plaintiff") is a federal prisoner proceeding *pro se* and *in forma pauperis*
20 in this civil rights action.

21 Plaintiff's Seventh Amended Complaint was screened (ECF No. 71), and the presiding
22 judge ordered that "[t]his action proceed as one for damages on Plaintiff's Fifth Amendment
23 due process claim against Defendants A, B, and Gonzaga." (*Id.* at 7). Plaintiff's other claims
24 were dismissed with prejudice. (*Id.*).

25 Defendant Gonzaga was later granted summary judgment (ECF No. 135), and the Doe
26 defendants were dismissed because Plaintiff failed to identify them (ECF No. 140, p. 4).
27 Plaintiff appealed. (ECF No. 143).

28 On May 2, 2018, the United States Court of Appeals for the Ninth Circuit issued a

1 decision on Plaintiff’s appeal. (ECF No. 148). The Ninth Circuit “affirm[ed] the grant of
2 summary judgment on Zavala’s procedural due process claim for money damages but vacate[d]
3 the judgment insofar as Zavala was barred by prior dismissal orders from seeking prospective
4 relief.” (Id. at 4). “The remaining arguments in Zavala’s pro se brief [were] without merit.”
5 (Id.). In so ruling, the Ninth Circuit noted that “[i]njunctive and declaratory relief would
6 prevent future constitutional harm.” (Id. at 3-4).

7 Given several issues, including that it was not clear whether Plaintiff’s Seventh
8 Amended Complaint appropriately requested injunctive relief and that Plaintiff was transferred
9 to a different institution (which could render moot Plaintiff’s request for injunctive relief), the
10 Court granted Plaintiff leave to file an amended complaint (ECF No. 156). The Court noted on
11 the record at the July 17, 2018 status conference that the amended complaint had to be
12 consistent with the Ninth Circuit’s order, as well as the prior orders in this case.

13 Plaintiff filed his Eighth Amended Complaint on October 22, 2018. (ECF No. 157).

14 **II. ANALYSIS**

15 After review of Plaintiff’s Eighth Amendment Complaint, the Court finds that Plaintiff
16 has failed to state a claim under relevant legal standards and the Ninth Circuit order in this case.

17 To begin, Plaintiff was not authorized to file an amended complaint so that he could
18 relitigate issues that have been decided. Despite this, and the Court’s warning at the July 17,
19 2018 status conference that the amended complaint had to comply with the prior orders in this
20 case, Plaintiff’s Eighth Amended Complaint includes claims that have already been dismissed
21 with prejudice. For example, Plaintiff is realleging First Amendment claims against
22 defendants Silva and Capel (ECF No. 157, pgs. 21-22), even though these claims have already
23 been dismissed with prejudice (ECF No. 71, p 7). Additionally, in Plaintiff’s prayer for relief
24 he seeks money damages (id. at 32), even though the dismissal of Plaintiff’s claim for money
25 damages was explicitly upheld by the Ninth Circuit (ECF No. 148, p. 4).

26 Additionally, the reason Plaintiff was given leave to file an amended complaint was so
27 that he could include allegations that would show that he is entitled to prospective injunctive
28 and/or declaratory relief (and to add new defendants, if necessary for Plaintiff’s claims for

1 prospective relief). After all, the Ninth Circuit's order in this case only permitted Plaintiff to
2 proceed on claims for injunctive or declaratory relief. This Plaintiff failed to do, and appears to
3 be unable to do. Plaintiff is no longer confined at the institution where the alleged violations
4 occurred (ECF No. 157, p. 1), and the most recent incidents alleged in the complaint occurred
5 in 2009 (while Plaintiff was still confined at United States Penitentiary, Atwater). There are no
6 allegations that Plaintiff currently has a reasonable expectation of being transferred back to
7 United States Penitentiary, Atwater, or that there is a substantial likelihood that Plaintiff will
8 again be subjected to similar constitutional violations. Therefore, based on the allegations in
9 Plaintiff's Eighth Amended Complaint, Plaintiff's requests for injunctive and declaratory relief
10 are moot.¹

11 **III. CONCLUSION AND RECOMMENDATIONS**

12 For the foregoing reasons, the Court will recommend that Plaintiff's Eighth Amended
13 Complaint be dismissed for failure to state a claim.

14 The Court does not recommend granting leave to amend. Plaintiff has already filed
15 numerous amended complaints. This case has already been appealed to the Ninth Circuit, and
16 this order follows the direction given by the Ninth Circuit. Additionally, at the July 17, 2018
17 status conference the Court explained to Plaintiff why he was being given leave to amend.
18 Despite this, Plaintiff failed to plead facts that would show that Plaintiff is entitled to prospective
19 relief. Finally, as Plaintiff has been transferred, it appears that any request for prospective relief
20 would be moot.

21 Accordingly, based on the foregoing, IT IS HEREBY RECOMMENDED that Plaintiff's
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24 ¹ When an inmate seeks injunctive or declaratory relief concerning the prison where he is incarcerated, his
25 claims for such relief become moot when he is transferred to another facility. Taylor v. Hubbard, No. 1:10-CV-
26 00404-LJO, 2013 WL 1222027, at *2 (E.D. Cal. Mar. 25, 2013) (citing Knows His Gun v. Montana, 866 F. Supp.
27 2d 1235, 1242-43 (D. Mont. 2012)), report and recommendation adopted, No. 1:10-CV-00404-LJO, 2013 WL
28 2102688 (E.D. Cal. May 14, 2013); Rhodes v. Robinson, 408 F.3d 559, 566, n. 8 (9th Cir. 2005); Dilley v. Gunn,
64 F.3d 1365, 1368 (9th Cir. 1995); Johnson v. Moore, 948 F.2d 517, 519 (9th Cir. 1991). See also Canatella v.
State of California, 304 F.3d 843, 852 (9th Cir. 2002) ("In the particular context of injunctive and declaratory relief,
a plaintiff must show that he has suffered or is threatened with a concrete and particularized legal harm, coupled
with a sufficient likelihood that he will again be wronged in a similar way.") (internal quotations and citations
omitted).

1 Eighth Amended Complaint be dismissed for failure to state a claim, and that this case be closed.

2 These findings and recommendations will be submitted to the United States district judge
3 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty-
4 one (21) days after being served with these findings and recommendations, Plaintiff may file
5 written objections with the Court. The document should be captioned “Objections to Magistrate
6 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections
7 within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler,
8 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir.
9 1991)).

10 Additionally, IT IS ORDERED that the Clerk of Court is directed to assign a district
11 judge to this case.

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13 IT IS SO ORDERED.

14 Dated: October 25, 2018

15 /s/ Eric P. Gray
16 UNITED STATES MAGISTRATE JUDGE
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