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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL LeNOIR SMITH,	CASE NO. 1:09-cv-00808-OWW-SMS PC
Plaintiff,	ORDER ADOPTING FINDINGS AND RECOMMENDATIONS, DISMISSING CERTAIN CLAIMS AND DEFENDANTS WITHOUT LEAVE TO AMEND AND DISMISSING CERTAIN CLAIMS WITH LEAVE TO AMEND
v.	
YATES, et al.,	
Defendants.	(Docs. 6 and 13)

Plaintiff Michael LeNoir Smith is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 15, 2009, the Magistrate Judge screened Plaintiff's Complaint, and issued a Findings and Recommendations recommending that various of Plaintiff's claims be dismissed without prejudice, that one of Plaintiff's claims be dismissed with prejudice, and that leave to file an amended complaint be granted for Plaintiff to attempt to cure defects in two of his claims. After obtaining an extension of time, Plaintiff filed a timely Objection on February 26, 2010.

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C),
2 this Court has conducted a de novo review of this case. Having
3 carefully reviewed the entire file, the Court finds the Findings
4 and Recommendations to be supported by the record and by proper
5 analysis.

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. The Findings and Recommendations, filed December 15,
8 2009, is adopted in full;
- 9 2. Plaintiff's Complaint, filed June 3, 2009, be dismissed,
10 granting Plaintiff leave to amend his claims against
11 Defendant Lubken for violation of Plaintiff's rights to
12 equal protection and for retaliating against Plaintiff;
- 13 3. Plaintiff's due process and Eighth Amendment claims
14 alleged in count one of the Complaint be dismissed, with
15 prejudice, for failure to state a claim under section
16 1983;
- 17 4. Plaintiff's claims alleged in counts two through six as
18 identified in the Complaint be dismissed from the action
19 without prejudice, pursuant to Rule 18(a);
- 20 5. Defendants Yates, Gray, Fogal, C. Huckabay, J. Hutchins,
21 M. Hodges-Wilkins, J.A. Herrera, Marion E. Spearman,
22 Walker, S. Kern, C. Tingey, Fiegen, N. Grannis, T.
23 Jackson, and B. Daveiga are dismissed from this action;
24 and
- 25 6. This matter is referred back to the Magistrate Judge for
26 further proceedings.

27 IT IS SO ORDERED.

28 Dated: March 8, 2010

/s/ Oliver W. Wanger

UNITED STATES DISTRICT JUDGE

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