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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ALVARO QUEZADA,)	1:09-cv-01856-LJO-BAM (PC)
)	
Plaintiff,)	ORDER ADOPTING FINDINGS AND
)	RECOMMENDATIONS REGARDING
v.)	DISMISSAL OF CERTAIN CLAIMS
)	
R. FISHER, et al.,)	(ECF No. 1, 43)
)	
Defendants.)	
)	
)	

Plaintiff Alvaro Quezada (“Plaintiff”) is a state prisoner proceeding in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on October 22, 2009. On July 30, 2012, the Court dismissed this action as duplicative of 1:08-cv-01404-FRZ. On May, 29, 2014, the Ninth Circuit Court of Appeals found that the action was not duplicative and reversed the Court’s dismissal order and remanded the action for further proceedings. On June 26, 2014, the Ninth Circuit issued its mandate.

On November 25, 2014, the Court screened Plaintiff’s complaint and found that it stated a cognizable claim for violation of the Fourteenth Amendment based on allegations of improper classification and race-based lockdowns, but failed to state any other cognizable claims. The Court directed Plaintiff to either file a first amended complaint or notify the Court that he did not wish to file an amended complaint and was willing to proceed only on the cognizable Fourteenth Amendment claim against Defendants Fisher, Jose, Doria, Scott and Ortiz. (ECF No. 40.) On December 15, 2014, Plaintiff filed a notice indicating that he wished to proceed only on the

1 cognizable claim. (ECF No. 41.) Based on the notice, the Magistrate Judge issued Findings and
2 Recommendations that this action proceed on Plaintiff's complaint, filed October 22, 2009, for
3 violation of the Fourteenth Amendment based on his allegations of improper classification and
4 race based lockdowns against Defendants Fisher, Jose, Doria, Scott and Ortiz. The Magistrate
5 Judge also recommended dismissal of Plaintiff's claim arising from his grievances, his
6 conspiracy claim, his retaliation claim and his request for declaratory relief. The Findings and
7 Recommendations were served on Plaintiff and contained notice that any objections were to be
8 filed within fourteen (14) days after service. (ECF No. 43.) On December 31, 2014, Plaintiff
9 filed objections to the Findings and Recommendations. (ECF No. 45.)

10 Plaintiff indicates that he is making his objections for the purpose of preserving his legal
11 rights on the issue of exhaustion. Plaintiff asserts that he does not waive any legal claim asserted
12 in his "Exhausted 602 Appeal Grievance KVSP-06-00822 & IAB Case No. 0703875." (ECF
13 No. 45, p. 2.) Plaintiff also does not agree with any inference that his exhausted grievance
14 should be dismissed relating to his Fourteenth Amendment claims. He also objects that his
15 exhausted grievance was not made part of the record to serve on Defendants with the summons
16 and complaint. Plaintiff asserts that the absence of his exhausted appeal does not waive or void
17 any of his Fourteenth Amendment legal claims. (Id.)

18 Plaintiff's objections appear to relate solely to the issue of exhaustion of administrative
19 remedies and not the Magistrate Judge's findings regarding Plaintiff's cognizable Fourteenth
20 Amendment claim. However, to the extent Plaintiff complains about the dismissal of any claim
21 regarding the alleged failure of the appeals coordinators to respond to or process his grievances,
22 the Magistrate Judge correctly determined that Plaintiff cannot state a constitutional claim related
23 to the acceptance or processing of his appeals. Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir.
24 2003); Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988) (no entitlement to grievance
25 procedure). Plaintiff's objections therefore do not provide any basis to reject the Magistrate
26 Judge's findings and recommendations.

27 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted
28 a de novo review of this case. Having carefully reviewed the entire file, including Plaintiff's

1 objections, the Court finds the Findings and Recommendations to be supported by the record and
2 by proper analysis.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. The Findings and Recommendations, issued on December 19, 2014, are adopted
5 in full;

6 2. This action shall proceed on Plaintiff's complaint, filed on October 22, 2009, for
7 violation of the Fourteenth Amendment based on his allegations of improper classification and
8 race based lockdowns against Defendants Fisher, Jose, Doria, Scott and Ortiz; and

9 3. Plaintiff's claim arising from his grievances, his conspiracy claim, his retaliation
10 claim and his request for declaratory relief are DISMISSED from this action.

11 IT IS SO ORDERED.

12 Dated: January 7, 2015

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE