

1 The Court screened Plaintiff's Second Amended Complaint pursuant to 28 U.S.C. § 1915A and
2 found that it states cognizable claims for relief under section 1983 against defendant McBride for
3 retaliation and against defendants Dale Patrick and Cynthia Mann for disciplinary action related to
4 Plaintiff's participation in the Inmate Financial Responsibility Program (IFRP). On May 25, 2012,
5 Plaintiff was given leave to file a Third Amended Complaint, or in the alternative, to notify the Court
6 that he does not wish to file a Third Amended Complaint and is instead willing to proceed either only
7 on the claim against defendant McBride or only on the claims against defendants Patrick and Mann.
8 (Doc. 59.) On June 4, 2012, Plaintiff filed written notice to the Court that he is willing to proceed only
9 on the claims against defendants Patrick and Mann found cognizable by the Court. (Doc. 60.)

10 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 11 1. This action proceed only against defendants Dale Patrick and Cynthia Mann for due
12 process violations related to Plaintiff's participation in the IFRP;
- 13 2. All remaining claims and defendants be dismissed from this action;
- 14 3. Plaintiff's official capacity claims, supervisory liability claims, and claims for failure to
15 train employees, conspiracy, denial of access to courts, violation of First Amendment
16 rights free speech, violation of equal protection, verbal harassment, mail tampering,
17 violation of Sixth Amendment right to counsel, violation of BOP and TCI rules or policy,
18 and declaratory and injunctive relief be dismissed for failure to state a claim upon which
19 relief may be granted under section 1983;
- 20 4. Plaintiff's claims for retaliation be dismissed under Rule 18; and
- 21 5. Defendants MTC, Neil H. Adler (Warden), Michael L. Benov (Warden), Tiarra Stewart,
22 Curtis Logan, Dennis McBride, Kwonto Sy, M. Villatoro, and unnamed Mail Room staff
23 members be dismissed from this action based on Plaintiff's failure to state any claims
24 upon which relief may be granted against them.

25 These Findings and Recommendations will be submitted to the United States District Judge
26 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days
27 after being served with these Findings and Recommendations, Plaintiff may file written objections with
28 the Court. The document should be captioned "Objections to Magistrate Judge's Findings and

1 Recommendations.” Plaintiff is advised that failure to file objections within the specified time may
2 waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: June 5, 2012

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE