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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT MCDANIEL,
Plaintiff,

v.

FRANK X. CHAVEZ, et al.,
Defendants.

1:10-cv-01077-LJO-EPG (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(ECF NOS. 58 & 67)

21 DAY DEADLINE

Robert McDaniel (“Plaintiff”) is a former state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff alleges that he was deprived of witnesses and evidence with regard to disciplinary proceedings that took place in 2008. 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 March 28, 2017, defendant Loyd filed a motion to dismiss. (ECF No. 58). On May 2, 2017, defendants Chavez and Davis filed a joinder to the motion to dismiss. (ECF No. 61). On June 2, 2017, Plaintiff filed his opposition to the motion to dismiss. (ECF No. 65). On June 12, 2017, defendants Loyd, Chavez, and Davis filed a reply to Plaintiff’s opposition. (ECF No. 65).

On July 13, 2017, Magistrate Judge Erica P. Grosjean entered findings and recommendations, recommending that the motion to dismiss be granted in part and denied in part. (ECF No. 67). Specifically, Judge Grosjean recommended that the motion to dismiss be

1 granted with respect to Plaintiff's claim for injunctive relief, with the remainder of the motion
2 to dismiss being denied (without prejudice to Defendants asserting the defense of qualified
3 immunity at a later stage in the proceeding). (Id. at 8).

4 The parties were provided an opportunity to file objections to the findings and
5 recommendations within thirty days. No objections were filed.

6 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this
7 Court has conducted a de novo review of this case. Having carefully reviewed the entire file,
8 the Court finds the findings and recommendations to be supported by the record and proper
9 analysis.

10 Accordingly, THE COURT HEREBY ORDERS that:

- 11 1. The findings and recommendations issued by the magistrate judge on July 13, 2017,
12 are ADOPTED in full;
- 13 2. Defendants' motion to dismiss is GRANTED in part and DENIED in part;
- 14 3. The motion to dismiss is GRANTED with respect to Plaintiff's claim for injunctive
15 relief;
- 16 4. Save and except as noted above, the motion to dismiss is DENIED, without
17 prejudice to Defendants asserting the defense of qualified immunity at a later stage
18 in the proceeding;
- 19 5. Defendants have twenty-one (21) days from the date of service of this order to file
20 their answer(s); and
- 21 6. This case is referred back to the magistrate judge for further proceedings.

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23 IT IS SO ORDERED.

24 Dated: September 6, 2017

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