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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LAWRENCE CHRISTOPHER SMITH,

 Plaintiff,

 v.

ALLISON, et al.,

 Defendants.

No. 1:10-cv-01814-DAD-JLT (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
JUDGMENT ON THE PLEADINGS

(Doc. Nos. 162 and 180)

Plaintiff is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. The matter was referred to the assigned magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 of the United States District Court for the Eastern District of California.

Plaintiff initially filed his complaint in this action on October 1, 2010. (Doc. No. 1.) Various motions have resulted in dismissal of plaintiff's claims such that, as of January of 2016, he was proceeding solely on his claims for retaliation in violation of the First Amendment against defendants Lt. Goss and Officer Langler and for a violation of his right to due process against defendant Lt. Goss as alleged in his third amended complaint. (*See* Doc. Nos. 31, 42, 47, 114, 126, 132, and 146.)

On January 29, 2016, defendants filed a motion for judgment on the pleadings on plaintiff's due process claim against defendant Goss. (Doc. No. 162.) In their motion, defendants

1 argued that the recent decision in *Frank v. Schultz*, 808 F.3d 762, 764 (9th Cir. 2015) rendered
2 plaintiff's due process claim against Goss not cognizable since the administrative reversal of the
3 prison disciplinary action taken against him is part of the due process he was provided, and that
4 the procedural correction cured any defects in the overturned disciplinary hearing.

5 On January 29, 2016, the assigned magistrate judge issued findings and recommendations.
6 (Doc. No. 180.) The magistrate judge recommended the defendants' motion for judgment on the
7 pleadings be granted and that plaintiff's due process claim against defendant Goss be dismissed.
8 (*Id.*) Those findings and recommendations allowed objections to be filed within thirty days of
9 service. (*Id.*) On April 4, 2016, plaintiff filed objections to the findings and recommendations in
10 which he restated arguments from his opposition to the motion and argued that he should be
11 allowed to once again amend his complaint.¹ (Doc. No. 183.)

12 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
13 *de novo* review of this case. Having carefully reviewed the entire file, including the objections
14 filed by plaintiff, the court finds the findings and recommendations to be supported by the record
15 and by proper analysis, and they are accordingly adopted in full.

16 For the reasons set forth above:

- 17 1. The findings and recommendations (Doc. No. 180) are adopted in full:
 - 18 a. Defendant Goss' motion for judgment on the pleadings (Doc. 162) on plaintiff's
19 due process claim against Goss is granted;
 - 20 b. Plaintiff's due process claim against Goss is dismissed;
 - 21 c. Defendant Goss is dismissed with prejudice from this action; and

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27 ¹ Plaintiff filed a motion to again amend his complaint on March 7, 2016. The assigned
28 magistrate judge has recommended that motion to amend be denied and the undersigned has not
yet ruled on that motion. (Doc. Nos. 174 and 187.)

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2. The matter is referred back to the magistrate judge for further proceedings consistent with this order.

IT IS SO ORDERED.

Dated: July 26, 2016



UNITED STATES DISTRICT JUDGE