

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GEORGE VASQUEZ,
Plaintiff,
v.
PAM AHLIN, et al.,
Defendants.

No. 1:10-cv-01973-DAD-JDP

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(Doc. No. 82)

Plaintiff George Vasquez is a former civil detainee at the Coalinga State Hospital (“CSH”) 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 a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 11, 2019, the assigned magistrate judge issued findings and recommendations, recommending that this action be dismissed (1) as moot and (2) due to plaintiff’s failure to obey a court order. (Doc. No. 82.) Specifically, the magistrate judge found that plaintiff’s due process claim—challenging a California Department of State Hospitals (“DSH”) regulation that restricted his access to certain electronic devices—was mooted by DSH’s amendment to that regulation in 2018 to allow patients to possess otherwise prohibited electronic devices under supervision. (*Id.* at 3–6.) In this court’s September 30, 2018 order adopting the magistrate judge’s August 31, 2018 findings and recommendations recommending dismissal of

1 plaintiff's first amended complaint ("FAC") as moot, the undersigned adopted in full the
2 magistrate judge's finding that the FAC had been rendered moot by the 2018 amendment to the
3 challenged regulation as well as the recommendation that plaintiff be permitted leave to file a
4 second amended complaint to "address[] the harm allegedly caused by violation of his due
5 process rights from the implementation of [the challenged regulation], as amended in 2018."
6 (Doc. Nos. 60, 66.) As the pending findings and recommendations note, however, "months have
7 passed since the court asked for an amended complaint from plaintiff, and he has not amended his
8 complaint." (Doc. No. 82 at 1.) Accordingly, the pending finding and recommendations
9 recommend the dismissal of this action due to plaintiff's failure to obey a court order. Finally, the
10 findings and recommendation recommend dismissing plaintiff's motion to stay (Doc. No. 72)
11 these proceedings pending the Ninth Circuit's decision on plaintiff's interlocutory appeal because
12 (1) the Ninth Circuit "has already rejected his arguments" and found that his due process claim
13 was moot and (2) an "interlocutory appeal ordinarily does not warrant a stay of proceedings."
14 (Doc. No. 82 at 11) (citing *California v. Azar*, 911 F/3d 558, 584 (9th Cir. 2018)). The findings
15 and recommendations contained notice that any objections were to be filed within fourteen days.
16 (Doc. No. 82 at 14.) To date, no objections to the findings and recommendations have been filed,
17 and the time to do so has since passed.¹

18 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Rule
19 304, the undersigned has conducted a *de novo* review of this case. Having carefully reviewed the
20 entire file, the court finds the findings and recommendations to be supported by the record and by
21 proper analysis.

22 Accordingly:

- 23 1. The findings and recommendations issued on September 11, 2019 (Doc. No. 82)
24 are adopted in full;

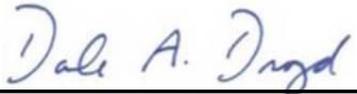
25
26 ¹ The court notes that plaintiff filed a response to the court's November 20, 2018 order to show
27 cause why this action should not be dismissed as moot. (*See* Doc. Nos. 75, 79.) Therein, plaintiff
28 argued that this action has not been rendered moot. Although his arguments in this regard are not
proper objections to the pending findings and recommendations, they are addressed in the
findings and recommendations and therefore need not be addressed again here.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. This action is dismissed as having been rendered moot by DSH's 2018 amendment to the challenged regulation and due to plaintiff's failure to comply with the court's orders;
3. Plaintiff's motion to stay (Doc. No. 72) is denied; and
4. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: September 30, 2019


UNITED STATES DISTRICT JUDGE