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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BRADY K. ARMSTRONG,

Plaintiff,

v.

JAMES A. YATES, et al.,

Defendants.

CASE NO. 1:10-CV-02380-LJO-DLB PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
CERTAIN CLAIMS AND DEFENDANTS

(DOC. 13)

_____ /

Plaintiff Brady K. Armstrong (“Plaintiff”) is a California state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed his original [complaint](#) on December 22, 2010. Doc. 1. 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 June 30, 2011, the Magistrate Judge filed a [Findings and Recommendations](#) which was served on Plaintiff and which contained notice to Plaintiff that any objection to the Findings and Recommendations was to be filed within twenty-one days. Doc. 13. After receiving several extensions of time, Plaintiff filed an [Objection](#) to the Findings and Recommendations on October 17, 2011. Doc. 21.

In accordance with the provisions of 28 U.S.C. § 636(b)(1), this Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis. The Court provides the

1 following additional analysis.

2 Plaintiff states a cognizable claim against Defendant S. Dishman for retaliation in violation
3 of the First Amendment and deliberate indifference in violation of the Eighth Amendment, and
4 against Defendant J. Aguerralde for retaliation in violation of the First Amendment. The Magistrate
5 Judge found, and the undersigned agrees, that Plaintiff's claims against Defendant S. Dishman and
6 J. Aguerralde arise from a different transaction or occurrence and belong in different cases. On
7 September 1, 2011, Plaintiff notified the Court of his intent to proceed against Defendant S. Dishman
8 in this action. Doc. 19. Plaintiff's claim against Defendant J. Aguerralde will be dismissed without
9 prejudice to refile in a new action.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The Findings and Recommendations, filed June 30, 2011, is adopted in full;
- 12 2. Plaintiff's claims which occurred in 2006 are DISMISSED pursuant to res judicata
13 and Defendants Yates, Trimble, Davis, Ferro, Hansen, Griffin, Gastelum, Stone,
14 Galaviz, Petrick, Mattingly, Shannon, Reeves, Ladd, and Grannis are dismissed from
15 this action;
- 16 3. Plaintiff's claims against Defendants Martinez, Davi, Ybarra, Spears, Montano,
17 Perry, Meyst, Ramos, and Kanu are DISMISSED with prejudice for failure to state
18 a claim against them;
- 19 4. Plaintiff's claim against Defendant J. Aguerralde for retaliation in violation of the
20 First Amendment is dismissed without prejudice; and
- 21 5. This action proceed on Plaintiff's claim against Defendant S. Dishman for retaliation
22 in violation of the First Amendment and deliberate indifference in violation of the
23 Eighth Amendment.

24 IT IS SO ORDERED.

25 **Dated: November 1, 2011**

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