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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TROY MITCHELL NAYLOR,
Plaintiff,
v.
CLIFF ALLENBY, et al.,
Defendants.

Case No. 1:11-cv-01649-LJO-MJS (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO (1) GRANT IN
PART AND DENY IN PART
DEFENDANT’S REQUEST FOR
JUDICIAL NOTICE, AND (2) GRANT IN
PART AND DENY IN PART
DEFENDANT’S MOTION TO DISMISS**

(ECF Nos. 12 & 23)

CASE TO REMAIN OPEN

Plaintiff is a civil detainee proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 28 U.S.C. § 1983. The action proceeds against Defendant Duvall on Plaintiff’s First Amendment retaliation claim and Fourth Amendment unlawful search claim. Plaintiff’s claims are based on an alleged retaliatory search of Plaintiff’s room and confiscation of his computer and electronic devices. Defendant moved to dismiss on the ground Plaintiff’s complaint failed to state a claim. The matter was referred to a United States 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.

1 On December 9, 2014, the Magistrate Judge issued findings and
2 recommendations to grant in part and deny in part Defendant's request for judicial
3 notice, and to grant in part and deny in part Defendant's motion to dismiss. (ECF No.
4 23.) Plaintiff filed a statement of no objections. (ECF No. 27.) Defendant filed objections.
5 (ECF No. 28.)

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

10 Defendant's first objection to the findings and recommendations concerns
11 Plaintiff's Fourth Amendment claim. Defendant argues that the Magistrate Judge
12 incorrectly stated that Plaintiff "had a reasonable expectation of privacy in his cell." (ECF
13 No. 28 at 2.) However, Defendant misstates the findings and recommendations. The
14 Magistrate Judge stated, "The issue in this case is . . . whether [Plaintiff] had the right to
15 be free from unreasonable searches" (ECF No. 23 at 7.) This is an accurate
16 statement of the law. Although the reasonableness of a particular search must be
17 determined with reference to the detention context and the correspondingly diminished
18 expectation of privacy, a search or seizure that is retaliatory is unreasonable and
19 violates the Fourth Amendment. Hydrick v. Hunter, 500 F.3d 978, 993 (9th Cir. 2007).

20 Next, Defendant argues that because the search was conducted to locate and
21 seize contraband, the search was proper. However, nothing in the complaint states that
22 the searches conducted by Defendant Duvall were for the purpose of locating and
23 seizing contraband. Defendant may introduce evidence of such purpose in a motion for
24 summary judgment or at trial. Liberally construed, the complaint contains sufficient facts
25 to create an inference that the search was retaliatory.

26 Lastly, Defendant objects to the extent the findings and recommendations
27 "suggest [Plaintiff] ha[s] a constitutional right to possess his electronic devices." (ECF
28 No. 28 at 4.) However, the findings and recommendation make no such suggestion, and

1 indeed plainly state to the contrary: “The issue in this case is not whether Plaintiff had a
2 constitutional right to possess his electronic devices” (ECF No. 23 at 7.) Rather,
3 the issue is whether Plaintiff had a right to be free from retaliatory search of his room
4 and seizure of his electronic devices.

5 Accordingly, Defendant’s objections are without merit. Based on the foregoing, it
6 is HEREBY ORDERED that:

- 7 1. The Court adopts the findings and recommendations (ECF No. 23), filed
8 December 9, 2014, in full;
- 9 2. Defendant’s request for judicial notice (ECF No. 12), filed April 29, 2014, is
10 GRANTED IN PART AND DENIED IN PART;
- 11 3. Defendant’s motion to dismiss (ECF No. 12), filed April 29, 2014, is
12 GRANTED IN PART AND DENIED IN PART;
- 13 4. Plaintiff’s claim for money damages against Defendant Duvall in his official
14 capacity is DISMISSED; and
- 15 5. Plaintiff may proceed on his remaining cognizable claims against
16 Defendant Duvall.

17 IT IS SO ORDERED.

18 Dated: February 24, 2015

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

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