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## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

JERRY MCDOWELL,

Plaintiff,

v.

R. RIVERA, et al.,

Defendants.

CASE NO. 1:13-cv-01797-LJO-MJS

FINDINGS AND RECOMMENDATIONS THAT CERTAIN CLAIMS AND DEFENDANTS BE DISMISSED

(ECF NO. 13)

FOURTEEN (14) DAY DEADLINE

Plaintiff Jerry McDowell, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on November 6, 2013. (ECF No. 1.) On December 31, 2013, after reviewing Plaintiff's Complaint, the Court ordered Plaintiff to either file an amended complaint or notify the Court of his willingness to proceed only on his Eighth Amendment claim against Defendants Sandoval, Garza, Fernandez, Guzman, Sanchez, and Acolla and First Amendment claim against Defendants Acolla and Fernandez. (ECF No. 7.) On March 5, 2014, Plaintiff notified the Court of his willingness to forgo an amended complaint and proceed with his cognizable claims. (ECF No. 13.)

Accordingly, all claims and Defendants in Plaintiffs Complaint, except for his Eighth Amendment claim against Defendants Sandoval, Garza, Fernandez, Guzman,

Sanchez, and Acolla and First Amendment claim against Defendants Acolla and Fernandez, should now be dismissed.

The Court hereby RECOMMENDS the following:

- Plaintiff be allowed to proceed on his Eighth Amendment claim against Defendants Sandoval, Garza, Fernandez, Guzman, Sanchez, and Acolla and First Amendment claim against Defendants Acolla and Fernandez;
- 2. Plaintiff's Eighth Amendment claims against Defendants Rivera and Patel be dismissed; and
  - 3. Defendants Rivera and Patel be dismissed from the action.

These Findings and Recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these Findings and Recommendations, any party may file written objections with the Court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served and filed within ten (10) days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: March 27, 2014 Isl Michael J. Seng
UNITED STATES MAGISTRATE JUDGE