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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 ADAM LOPEZ,

12 Plaintiff,

13 v.

14 K. ALLISON, et al.,

15 Defendants.
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No. 1:13-cv-02010-DAD-JLT

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS DENYING MOTION
TO DISMISS ON CLAIM / ISSUE
PRECLUSION GROUNDS, AND
DIRECTING DEFENDANTS TO FILE AN
ANSWER

(Doc. Nos. 26, 40)

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19 Plaintiff, Adam Lopez, is a state prisoner proceeding pro se and *in forma pauperis* in this
20 civil rights action under 42 U.S.C. § 1983, filed on December 9, 2013. (Doc. Nos. 1, 10.) The
21 matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and
22 Local Rule 302.

23 On January 28, 2016, the assigned magistrate judge filed findings and recommendations
24 recommending that defendants' motion to dismiss plaintiff's complaint on collateral estoppel/*res*
25 *judicata* grounds be denied. Those findings and recommendations were served on the parties and
26 contained notice to the parties that objections to the findings and recommendations were to be
27 filed within twenty-one days. (Doc. No. 40.) Despite the lapse of more than the allotted time,
28 neither side has filed objections to the findings and recommendations. Local Rule 304(b), (d).


1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
2 *de novo* review of this case. Having carefully reviewed the entire file, the court finds the findings
3 and recommendations to be supported by the record and by proper legal analysis. The assigned
4 magistrate judge appropriately concluded that in arguing plaintiff is precluded from prosecuting
5 this action due to the granting of summary judgment in favor of the defendants in *Martinez v.*
6 *Allison, et al.*, 1:11-cv-00293-LJO-DLB (E.D. Cal.), defendants have, at the very least, failed to
7 establish the required privity exists between plaintiff and the plaintiff in Martinez. (Doc. No. 40
8 at 5-6.) Absent that showing, their motion to dismiss must be denied.

9 For the reasons set forth above:

- 10 1. The findings and recommendations filed on January 28, 2016 are ADOPTED IN
11 FULL;
- 12 2. Defendants' motion to dismiss (Doc. No. 26) filed on August 18, 2015 seeking
13 dismissal on grounds of claim or issue preclusion/collateral estoppel/*res judicata* is
14 DENIED; and
- 15 3. Defendants are directed to file an answer to plaintiff's second amended complaint
16 (Doc. No. 20) within twenty-one (21) days of service of this order.

17 IT IS SO ORDERED.

18 Dated: March 9, 2016

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UNITED STATES DISTRICT JUDGE