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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUAN CARLOS MARTINEZ,
Plaintiff,
v.
BEARD, et al.,
Defendants.

Case No. 1:14-cv-00405-AWI-JLT (PC)
ORDER ADOPTING FINDINGS AND RECOMMENDATIONS DISMISSING DEFENDANTS BEARD, KATAVICH, YOUSSEF, and MARSHALL WITHOUT PREJUDICE; DISMISSING KELSO AND THARRATT WITH PREJUDICE; and TERMINATING "R. SAGUSTA" AND "M. SANGER" FROM THE DOCKET OF THIS ACTION
(Doc. 52)

Plaintiff, Juan Carlos Martinez, is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”) and is proceeding in this civil rights action 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.

Plaintiff is proceeding in this action on his cognizable claims as stated in the Second Amended Complaint. (Doc. 36.) However, Plaintiff did not name all of the defendants he originally named in this action in that operative pleading. Specifically, Plaintiff did not name: CDCR Secretary Jeffrey A. Beard; Warden John N. Katavich; R. Sagusta; M. Sanger; Ashraf Youssef, MD; Brian Marshall; Robert Tharratt, MD; and J. Clark Kelso. (*See id.*) Thus, on March 11, 2015, a Findings and Recommendations issued to dismiss those Defendants with prejudice per Federal Rule of Civil Procedure 41(a)(1)(B). (Doc. 37.) Plaintiff filed objections and a notice of voluntary dismissal of Jeffrey A. Beard, John N. Katavich, Ashraf Youssef, M.D., and Brian Marshall seeking to dismiss them without prejudice per Rule 41(a)(1)(A). (Docs. 38,

1 39.) Due to the vastly differing implications for dismissals with or without prejudice, an order
2 issued on April 14, 2015 (Doc. 40) giving the Defendants, who had requested screening in this
3 action, opportunity to respond to Plaintiff's objections (Doc. 43) and Plaintiff an opportunity to
4 reply (Doc. 46). Subsequent to various filings by the parties, on May 20, 2015, a Findings and
5 Recommendations issued withdrawing the March 11, 2015 Findings and Recommendations and
6 recommending: dismissal of Defendants Beard, Katavich, Youssef, and Marshall and all claims
7 against them without prejudice; dismissal of Defendants Tharrat and Kelso and all claims against
8 them with prejudice; and terminating Defendants "R. Sagusta" and "M. Sanger" from the docket
9 of this action. (Doc. 52.) The May 20, 2015 Findings and Recommendations provided for
10 objections to be filed within thirty days of its service. (*Id.*) No objections were filed.

11 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
12 *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the
13 Findings and Recommendations that issued on May 20, 2015 to be supported by the record and
14 by proper analysis.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. the Findings and Recommendations, issued on May 20, 2015 (Doc. 52), is adopted
17 in full;
- 18 2. the Clerk of the Court is directed to terminate the entries of Defendants by the
19 names of "R. Sagusta" and "M. Sanger" from the docket of this action;
- 20 3. Defendants J. Clark Kelso and Robert Tharratt, M.D. and all claims against them
21 are dismissed with prejudice; and
- 22 4. Defendants Secretary Jeffrey A. Beard; Warden John N. Katavich; Ashraf
23 Youssef, MD; and Brian Marshall and all claims against them are dismissed
24 from this action without prejudice.

25 IT IS SO ORDERED.

26 Dated: July 8, 2015

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28 SENIOR DISTRICT JUDGE