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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ANTHONY TYRONE CAMPBELL, SR.,
Plaintiff,
v.
P. DICKEY,
Defendant.

Case No. 1:14-cv-00918-LJO-BAM (PC)
**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DENYING
DEFENDANT’S MOTION TO DISMISS**
(Doc. Nos. 40, 45, 46)

Plaintiff Anthony Tyrone Campbell, Sr., is a state prisoner proceeding *pro se* and *in forma pauperis* 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.

On August 3, 2016, the Court dismissed this action for failing to state a claim upon which relief may be granted. (Doc. No. 18.) Judgment was entered that same day. (Doc. No. 19.) Plaintiff appealed. (Doc. No. 20.)

On March 17, 2017, the Ninth Circuit affirmed in part, reversed in part, and remanded this action. (Doc. No. 26.) The Ninth Circuit found that all claims had been properly dismissed except for Plaintiff’s equal protection claim against Defendant Dickey. The Ninth Circuit held that such dismissal was premature because “the allegation that Dickey assigned Campbell to a cell with a gang-affiliated inmate based on Campbell’s race, liberally construed, is ‘sufficient to warrant ordering [defendant] to file an answer.’” (*Id.* at 2) (quoting *Wilhelm v. Rotman*, 680 F.3d

1 1113, 1116 (9th Cir. 2012)). *See also Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003)
2 (plaintiff need only allege that defendant acted at least in part based on a plaintiff's protected
3 status). The Ninth Circuit issued its mandate on April 10, 2017. (Doc. No. 26.)

4 On October 9, 2017, Defendant Dickey filed a motion to dismiss under Federal Rule of
5 Civil Procedure 12(b)(6), arguing that Plaintiff had failed to state a cognizable claim, that his
6 claim is barred by the favorable termination rule as articulated in *Heck v. Humphrey*, 512 U.S.
7 477 (1994), and that Defendant is entitled to qualified immunity. On August 9, 2018, the
8 assigned Magistrate Judge recommended that Defendant's motion be denied, in its entirety.
9 (Doc. No. 45.) The findings and recommendations was served on the parties and contained notice
10 that any objections to the findings and recommendations were to be filed within fourteen (14)
11 days. Defendant timely filed objections on August 23, 2018. (Doc. No. 46.)

12 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
13 *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the
14 findings and recommendations to be supported by the record and by proper analysis. The
15 objections do not provide a basis upon which to reject the findings and recommendations.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. The findings and recommendations issued on August 9, 2018, are adopted in full;
- 18 2. Defendant's motion to dismiss, filed on October 9, 2017, is denied; and
- 19 3. Defendant shall file an answer within fourteen (14) days of this order. Fed. R. Civ.
20 P. 12(a)(4)(A).

21
22 IT IS SO ORDERED.

23 Dated: August 24, 2018

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