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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GORDON C. REID,
Plaintiff,
v.
UNITED STATES OF AMERICA, et al.,
Defendants.

Case No. 1:14-cv-01163-LJO-MJS (PC)

ORDER (1) ADOPTING FINDINGS AND RECOMMENDATIONS, (2) GRANTING PLAINTIFF'S MOTION TO POSTPONE SUMMARY JUDGMENT TO CONDUCT DISCOVERY, AND (3) DENYING, WITHOUT PREJUDICE, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

(ECF Nos. 52, 54, 60)

TWENTY-ONE DAY DEADLINE TO RESPOND TO COMPLAINT

Plaintiff is a federal prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971). The action proceeds on Plaintiff's First Amendment retaliation claim against Defendant Ontiveroz. 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.

On September 11, 2017, the Magistrate Judge issued findings and recommendations to grant Plaintiff's motion to postpone Defendant's motion for

1 summary judgment to allow Plaintiff to conduct discovery and, on that basis, to deny the
2 motion for summary judgment without prejudice. (ECF No. 60.) Plaintiff objected to the
3 findings and recommendations on the ground that they did not specify a date for
4 Defendant to respond to the complaint. (ECF No. 61.) Defendant also objected to the
5 findings and recommendations. (ECF No. 62.) Plaintiff responded to Defendant's
6 objections. (ECF No. 63.)

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

11 This matter is in its initial stages. Plaintiff's complaint has been screened and
12 Defendant has been served. However, no discovery has occurred. In these
13 circumstances, a Rule 56(d) motion should be freely granted. Burlington N. Santa Fe
14 R.R. Co. v. Assiniboine and Sioux Tribes of the Fort Peck Reservation, 323 F.3d 767,
15 773 (9th Cir. 2003). Nonetheless, Defendant contends that Plaintiff's motion should be
16 denied because no amount of discovery would provide evidence for Plaintiff to defeat
17 summary judgment.

18 The action proceeds on a single retaliation claim based on the allegation that
19 Defendant wrote a false incident report against Plaintiff on May 1, 2013, resulting in an
20 unwarranted use of restraints. (ECF Nos. 28, 31, 42.) Although unclear from the
21 pleadings, it appears that the allegedly false report relayed that Plaintiff refused to
22 accept a cell mate. (See ECF No. 52-8 (Declaration of Jason Ontiveroz); ECF No. 63
23 (Plaintiff's response to Defendant's objections).) As Defendant correctly points, this
24 Court has determined with regard to Plaintiff's claims against other defendants that the
25 writing of reports and use of restraints was a legitimate correctional response to
26 Plaintiff's refusal to accept a cell mate. (ECF No. 42.) Plaintiff's retaliation claims against
27 those defendants were therefore dismissed. (ECF Nos. 42, 45.)

