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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM BIRDSALL,
Plaintiff,
v.
D. JAMES,
Defendant.

No. 1:14-cv-01738-DAD-BAM

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
CERTAIN CLAIMS AND DEFENDANTS

(Doc. No. 38)

Plaintiff William Birdsall is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. Defendant James has appeared in this action, while defendants Sherman and Hall have not.

On July 5, 2017, the assigned magistrate judge screened plaintiff’s second amended complaint and found that he had stated a cognizable Due Process claim against defendant James. (Doc. No. 18.) The assigned magistrate judge dismissed all other claims and defendants from this action. (*Id.*) This case now proceeds on plaintiff’s Due Process claim against defendant James.

On January 22, 2018, the assigned magistrate judge re-screened plaintiff’s second amended complaint, recognizing that a recent Ninth Circuit opinion, *Williams v. King*, 875 F.3d 500 (9th Cir. 2017), had held that a magistrate judge does not have jurisdiction to dismiss claims with prejudice in screening prisoner complaints even if a plaintiff has consented to magistrate

1 judge jurisdiction, as plaintiff did here where not all named defendants, including those not yet
2 appearing, had not consented to magistrate judge jurisdiction. (Doc. No. 38.) Concurrently, the
3 assigned magistrate judge issued findings and recommendations, recommending that the
4 undersigned dismiss the claims previously found to be non-cognizable by the magistrate judge.
5 (*Id.*) The parties were given fourteen days to file objections to those findings and
6 recommendations. Following an extension of time, plaintiff timely filed objections on March 7,
7 2018. (Doc. No. 42.)

8 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, the
9 undersigned has conducted a *de novo* review of the case. Having carefully reviewed the entire
10 file, including plaintiff's objections, the court finds the findings and recommendations to be
11 supported by the record and by proper analysis.

12 In his objections, plaintiff merely reiterates the allegations in his complaint, contending
13 that defendants Sherman and Hall violated his rights in failing to "fix" the prison disciplinary
14 charge brought against plaintiff for possession of a weapon in response to plaintiff's filing of an
15 inmate grievance. Plaintiff's allegations in this regard again fail to state a cognizable claim
16 against these defendants, and none of plaintiff's objections provide a legal basis on which to
17 question the magistrate judge's findings and recommendations. Further, in light of plaintiff's
18 previous filing of two amended complaints in this action, the court finds that granting further
19 leave to amend would be unwarranted, would unduly delay these proceedings and unnecessarily
20 consume scarce judicial resources, and would be futile.

21 For these reasons:

- 22 1. The findings and recommendations issued on January 22, 2018 (Doc. No. 38) are adopted
23 in full;
- 24 2. Defendants Sherman and Hall are dismissed from this action with prejudice due to
25 plaintiff's failure to state any cognizable claims against them; and

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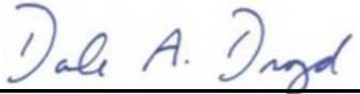
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3. This action now proceeds solely on the Due Process claim against defendant James as alleged in the second amended complaint, that claim having been found to be cognizable in the magistrate judge's prior screening orders. (Doc Nos. 18, 38.)

IT IS SO ORDERED.

Dated: May 2, 2018


UNITED STATES DISTRICT JUDGE