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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MATTHEW V. SALINAS,

Plaintiff,

vs.

KENNETH J. POGUE, et al.,

Defendants.

1:16-cv-00520-DAD-GSA-PC

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS ACTION  
PROCEED ONLY AGAINST DEFENDANT  
C/O K. GOMNESS ON PLAINTIFF'S ADA  
CLAIM AND RELATED STATE LAW  
CLAIMS, AND THAT ALL OTHER CLAIMS  
AND DEFENDANTS BE DISMISSED

OBJECTIONS, IF ANY, DUE IN 14 DAYS

Matthew V. Salinas (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. On April 14, 2016, Plaintiff filed the Complaint commencing this action. (ECF No. 1.) On November 17, 2016, Plaintiff filed the First Amended Complaint. (ECF No. 25.) On February 22, 2017, Plaintiff filed the Second Amended Complaint. (ECF No. 29.)

The Second Amended Complaint names defendants Kenneth J. Pogue (CDCR Secretary), R. Ndoh (Warden, ASP), C. Herrera (Associate Warden, ASP), Captain N. Lopez, Correctional Officer (C/O) K. Gomness, C/O N. Palmer, and Doe Defendants #2-10 (ASP

1 employees), and alleges ADA claims, equal protection claims, verbal harassment claims, state  
2 law claims, and retaliation claims.

3 On September 21, 2017, the court screened Plaintiff's Second Amended Complaint  
4 pursuant to 28 U.S.C. § 1915A and found that it states a cognizable ADA claim against  
5 defendant C/O Gomness in his official capacity, but no other claims. (ECF No. 32.) On  
6 September 1, 2017, Plaintiff was granted leave to either file a Third Amended Complaint or  
7 notify the Court that he is willing to proceed only on the claim found cognizable by the Court  
8 and related state law claims. (Id.) On December 20, 2017, Plaintiff filed a notice informing the  
9 Court that he is willing to proceed only on the cognizable ADA claim and related state law  
10 claims against defendant C/O Gomness. (ECF No. 38.)

11 Based on the foregoing, it is **HEREBY RECOMMENDED** that:

- 12 1. This action proceed only against defendant C/O K. Gomness in his official  
13 capacity on Plaintiff's ADA claim, and related state law claims;
- 14 2. All remaining claims and defendants be dismissed from this action;
- 15 3. Plaintiff's Fourteenth Amendment equal protection claims, verbal harassment  
16 claims, and First Amendment retaliation claims be dismissed from this action  
17 based on Plaintiff's failure to state a claim; and
- 18 4. Defendants Kenneth J. Pogue (CDCR Secretary), R. Ndoh (Warden, ASP), C.  
19 Herrera (Associate Warden, ASP), Captain N. Lopez, C/O N. Palmer, and Doe  
20 Defendants #2-10 (ASP employees) be dismissed from this action, based on  
21 Plaintiff's failure to state any claims against them.

22 These Findings and Recommendations will be submitted to the United States District  
23 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
24 **fourteen (14) days** after the date of service of these Findings and Recommendations, Plaintiff  
25 may file written objections with the court. The document should be captioned "Objections to  
26 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
27 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.

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1 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394  
2 (9th Cir. 1991)).

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4 IT IS SO ORDERED.

5 Dated: January 8, 2018

/s/ Gary S. Austin  
6 UNITED STATES MAGISTRATE JUDGE