

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ANTHONY SILVA,  
Plaintiff,  
v.  
WORTH, et al.,  
Defendants.

**Case No. 1:16-cv-01131-AWI-SKO (PC)**  
**ORDER ADOPTING FINDINGS AND RECOMMENDATIONS AND STRIKING PLAINTIFF’S FIRST AMENDED COMPLAINT**  
**(Docs. 43, 46, 51, 52, 53)**  
**FOURTEEN (14) DAY DEADLINE**

Plaintiff, Anthony Silva, 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 March 6, 2019, the Magistrate Judge filed a Findings and Recommendations (“F&R”) to strike Plaintiff’s First Amended Complaint and for Plaintiff to proceed on the claims found cognizable in the original Complaint. (Doc. 52.) The F&R was served that same day and contained provisions for the parties to file objections within twenty-one days with which Plaintiff complied. (Docs. 52, 53.)

The recommendation in the F&R is based on the finding that the only new claims Plaintiff alleged in the FAC are based on California law and that Plaintiff does not show compliance with the California Government Claims Act (“CGCA”). (*Id.*) In fact, in response to an order to show

1 cause (Doc. 46), Plaintiff admitted that other inmates had been assisting him with this action and  
2 that he was unaware of a requirement to comply with the CGCA before pursuing claims under  
3 California law (Doc. 51). Plaintiff's objection to the F&Rs does not show compliance with the  
4 CGCA and is merely a paragraph of various case citations. (Doc. 53.) Because Plaintiff does not  
5 show compliance with the CGCA he may not pursue claims under California law in this action.  
6 *See* Cal. Govt. Code §§ 810 et seq..

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

10 Accordingly, **IT IS HEREBY ORDERED** that:

- 11 1. The Findings and Recommendations, issued on March 6, 2019 (Doc. 52), is  
12 adopted in full;
- 13 2. Plaintiff's First Amended Complaint, filed on September 20, 2018 (Doc. 43), is  
14 **STRICKEN** from the record and this action **SHALL** proceed on the claims found  
15 cognizable in Plaintiff's original Complaint (*see* Docs. 1, 24, 27, 28); and  
16 3. **Within 14 days** of the date of service of this order, the parties **SHALL** file  
17 statements indicating whether a court supervised settlement conference would be  
18 beneficial.

19  
20 IT IS SO ORDERED.

21 Dated: April 17, 2019

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