UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

WILLIAM J. GRADFORD,

Plaintiff,

v.

DEPUTY MCDOUGALL,

Defendant.

1:17-cv-00575-DAD-GSA-PC

FINDINGS AND RECOMMENDATIONS, RECOMMENDING THAT THIS ACTION PROCEED ONLY AGAINST DEFENDANT MCDOUGALL ON PLAINTIFF'S CLAIM FOR MAIL INTERFERENCE UNDER THE SIXTH AMENDMENT, AND THAT ALL OTHER CLAIMS BE DISMISSED

OBJECTIONS, IF ANY, DUE IN 14 DAYS

William J. Gradford ("Plaintiff") is a prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On April 24, 2017, Plaintiff filed the Complaint commencing this action. (ECF No. 1.) On May 30, 2017, the court screened the Complaint under 28 U.S.C. § 1915 and issued an order dismissing the Complaint for failure to state a claim, with leave to amend. (ECF No. 9.) On June 8, 2017, Plaintiff filed the First Amended Complaint. (ECF No. 11.) On August 23, 2017, the court related this case to Plaintiff's other pending cases under Local Rule 123 and reassigned the case to the dockets of District Judge Dale A. Drozd and Magistrate Judge Gary S. Austin. (ECF No. 12.)

On April 30, 2018, the court consolidated Plaintiff's case 1:17-cv-01525-DAD-GSA-PC with this case, closing case 1:17-cv-01525-DAD-GSA-PC. (ECF No. 14.) The court ordered Plaintiff to file an amended complaint in the consolidated case 1:17-cv-00575-DAD-

GSA-PC. (<u>Id.</u>) On May 9, 2018, Plaintiff filed the Second Amended Complaint. (ECF No. 15.)

On August 20, 2018, the court screened the Second Amended Complaint and found that it states a cognizable claim for mail interference under the Sixth Amendment against defendant McDougall, but no other claims. (ECF No. 16.) Plaintiff was granted leave to either file a Third Amended Complaint or notify the court that he is willing to proceed only on the claim found cognizable by the court. (<u>Id.</u>) On August 27, 2018, Plaintiff filed a notice informing the court that he is willing to proceed only on the cognizable mail interference claim against defendant McDougall. (ECF No. 17.)

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

- This action proceed only against defendant McDougall on Plaintiff's claim for mail interference under the Sixth Amendment;
- 2. All remaining claims be dismissed from this action;
- Plaintiff's claims for retaliation and for violation of the Equal Protection Clause be dismissed from this action based on Plaintiff's failure to state any claims upon which relief may be granted; and
- 4.
- This case be referred back to the Magistrate Judge for further proceedings, including initiation of service of process.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(l). Within fourteen (14) days after being served with these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. <u>Martinez v. Ylst</u>, 951 F.2d 1153 (9th Cir. 1991).

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Dated: August 29, 2018

IT IS SO ORDERED.

/s/ Gary S. Austin

