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

MARCUS HARRISON,
Plaintiff,
v.
NIEHUS, et al.,
Defendants.

Case No. 1:17-cv-01120-LJO-BAM (PC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS REGARDING
DISMISSAL OF ACTION FOR FAILURE TO
STATE A CLAIM
(ECF No. 13)

Plaintiff Marcus Harrison is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 9, 2019, the assigned Magistrate Judge issued findings and recommendations recommending dismissal of this action, with prejudice, for failure to state a cognizable claim upon which relief may be granted. (ECF No. 13.) The findings and recommendations were served on Plaintiff and contained notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 12.) Plaintiff timely filed written objections to the findings and recommendations on September 23, 2019. (ECF No. 14.)

First, Plaintiff argues that he has stated a cognizable claim for a violation of his constitutional right of access to the courts because he has sufficiently alleged that the confiscation of his “legal exhibits” caused Plaintiff to suffer an “actual injury,” i.e., the loss of two

1 nonfrivolous § 1983 cases. However, after reviewing the allegations of Plaintiff's second
2 amended complaint, the Court agrees with the Magistrate Judge's finding that Plaintiff has failed
3 to sufficiently allege facts demonstrating that the confiscation of his "legal exhibits" caused the
4 loss of Plaintiff's two underlying nonfrivolous § 1983 actions. Therefore, Plaintiff's first
5 objection is overruled.

6 Second, Plaintiff argues that he has state a cognizable claim for a violation of his First
7 Amendment right of free speech, expression, and association because he has sufficiently alleged
8 that his confiscated "legal exhibits" did not threaten the legitimate penological interests of prison
9 security. However, the Magistrate Judge found that Plaintiff had adequately alleged the lack of a
10 legitimate penological interest. Instead, the Magistrate Judge found that Plaintiff had failed to
11 state a cognizable First Amendment claim because Plaintiff had not pled facts demonstrating that
12 the challenged regulations were not rationally related to a legitimate and neutral government
13 objective, that Plaintiff has no alternative avenues to exercise his First Amendment right, and that
14 there are easy and obvious alternatives that indicate that the regulations are an exaggerated
15 response by prison officials. (ECF No. 13, at 9.) After reviewing the allegations of Plaintiff's
16 second amended complaint, the Court agrees with the Magistrate Judge's finding that Plaintiff has
17 failed to state a cognizable claim a violation of his First Amendment right of free speech,
18 expression, and association. Therefore, Plaintiff's second objection is overruled.

19 Third, Plaintiff objects to his case being reviewed by a Magistrate Judge because he
20 specifically declined to have this case reviewed by a Magistrate Judge on September 1, 2017.

21 This matter was referred to the assigned Magistrate Judge pursuant to 28 U.S.C. §
22 636(b)(1) and Local Rule 302. If all parties consent to Magistrate Judge jurisdiction, the case will
23 be reassigned to the Magistrate Judge and the Magistrate Judge will decide all further matters in
24 the case, including dispositive matters and trial. If a party declines Magistrate Judge jurisdiction,
25 as Plaintiff did in this case, the District Judge will resolve all dispositive matters and conduct the
26 trial, if there is one. However, a party's decision to decline Magistrate Judge jurisdiction has no
27 effect on the referral of the case to a Magistrate Judge for non-dispositive matters, including
28 screening orders, and for the issuance of findings and recommendations on dispositive motions.

1 28 U.S.C. § 636(b)(1); Local Rule 302. Therefore, Plaintiff's third objection is without merit and
2 it is overruled.

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a
4 *de novo* review of this case. Having carefully reviewed the entire file, including Plaintiff's
5 objections, the Court finds that the Magistrate Judge's findings and recommendations are
6 supported by the record and proper analysis.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The findings and recommendations issued on September 9, 2019, (ECF No. 13),
9 are adopted in full;
- 10 2. This action is dismissed, with prejudice, due to Plaintiff's failure to state a claim
11 upon which relief may be granted; and
- 12 3. The Clerk of the Court is directed to close this case.

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IT IS SO ORDERED.

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Dated: November 20, 2019

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

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