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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANK WELLS,
Plaintiff,
v.
ROSA GONZALES,
Defendant.

No. 1:17-cv-01240-DAD-EPG (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(Doc. No. 120)

Plaintiff Frank Wells is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed 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 February 18, 2021, this action settled (Doc. No. 107) and was accordingly closed (Doc. Nos. 110). However, the court retained jurisdiction over the action in order to enforce the terms of the parties' settlement agreement. (*Id.*) On July 6, 2021, plaintiff filed a motion to enforce the settlement agreement. (Doc. No. 112.) On October 13, 2021, the assigned magistrate judge issued findings and recommendations, recommending that plaintiff's motion to enforce the settlement agreement be denied and that jurisdiction over this matter be terminated. (Doc. No. 120.) Those findings and recommendations were served on plaintiff and contained notice that any objections thereto were to be filed within fourteen (14) days from the date of service. (*Id.*) On October 29, 2021, plaintiff filed his objections, a motion to rescind the settlement agreement,

1 and a motion for a certificate of appealability. (Doc. Nos. 121, 122, 123.) On November 5, 2021,
2 defendant filed a consolidated opposition and response to plaintiff's objections and motions.
3 (Doc. No. 124.) On November 18, 2021, plaintiff filed a reply thereto. (Doc. No. 125.)

4 With respect to plaintiff's motion to rescind the parties' settlement agreement¹, plaintiff
5 appears to misunderstand the pending findings and recommendations. Plaintiff alleges that the
6 assigned magistrate judge found that defendant violated the settlement agreement, but this is not
7 the case. The magistrate judge merely concluded that there was some evidence that defendant did
8 not strictly comply with California Penal Code § 2085.8(a). (Doc. No. 120 at 8–9.) However, the
9 magistrate judge further concluded that this potential lack of strict compliance did not breach the
10 parties' settlement agreement. (*Id.*) Moreover, plaintiff fails to explain how he was injured by
11 any failure to strictly comply with that provision. As the pending findings and recommendations
12 point out, whether defendant failed to comply with California Penal Code § 2085.8(a) was
13 irrelevant to the settlement agreement. Whether or not defendant strictly complied with
14 California Penal Code § 2085.8(a), plaintiff still received exactly what he was entitled to receive
15 pursuant to the terms of the agreement. (*Id.* at 9.) Finally, plaintiff fails to cite any authority
16 suggesting that a settlement agreement should be rescinded in this situation, nor is the court aware
17 of any. Accordingly, the court will deny plaintiff's motion to rescind.

18 With respect to plaintiff's motion for a certificate of appealability, the court will deny
19 plaintiff's motion because plaintiff does not require permission to file an appeal in this closed §
20 1983 action. If plaintiff wishes to appeal this or any other order, he only needs to file a notice of
21 appeal with the court within the time required by the applicable provisions. In any such notice,
22 plaintiff should identify the order(s) from which he is appealing.

23 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C) and Local Rule 304, this
24 court has conducted a *de novo* review of the case. Having carefully reviewed the entire file,
25 *//////*
26 including plaintiff's objections, the court finds the findings and recommendations to be supported

27 ¹ Plaintiff filed a separate motion to rescind, but he includes his arguments pertaining to that
28 motion in his objections to the pending findings and recommendations. (*See* Doc. Nos. 121, 122.)

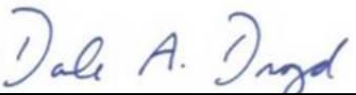
1 by the record and by proper analysis.

2 Accordingly,

- 3 1. The findings and recommendations issued on October 13, 2021 (Doc. No. 120) are
- 4 adopted in full;
- 5 2. Plaintiff's motion to enforce the settlement agreement (Doc. No. 112) is denied;
- 6 3. Plaintiff's motion to rescind the settlement agreement (Doc. No. 122) is denied;
- 7 4. Plaintiff's motion for a certificate of appealability (Doc. No. 123) is denied as
- 8 unnecessary; and
- 9 5. The court's retention of jurisdiction over this matter is terminated.

10 IT IS SO ORDERED.

11 Dated: November 19, 2021



UNITED STATES DISTRICT JUDGE

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