UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

KRISTOPHER KIRCHNER,) Case No.: 1:18-cv-0516 JLT BAM
Plaintiff, v. M. BITER, et al., Defendants.	ORDER ADOPTING IN FULL THE FINDINGS AND RECOMMENDATIONS, GRANTING THE MOTION TO DISMISS, AND DIRECTING THE CLERK OF COURT TO CLOSE THE CASE (Docs. 42, 53)
Defendants.	'

Plaintiff seeks to hold the defendants liable for a violation of his due process rights related to disciplinary proceedings pursuant to the Fourteenth Amendment. (Docs. 19, 22.) Defendants assert that Plaintiff litigated his claim with a petition for writ of habeas corpus in Del Norte County Superior Court, and the action is barred by the doctrine of res judicata. (*See generally* Doc. 42-1.) Thus, Defendants moved to dismiss the action with prejudice. (Doc. 42.)

The assigned magistrate judge took judicial notice of proceedings in Del Norte County Superior Court Case No. HCPB-15-5095, including the petition and order granting the petition. (Doc. 52 at 12.) The magistrate judge found "the instant action concerns the same due process cause of action" addressed by the state court." (*Id.* at 13.) Specifically, the magistrate judge observed: "The allegations in this action involve the same primary right asserted by Plaintiff, the same primary duties devolving upon the same defendants, and allege the same harms done by defendants...." (*Id.*) In addition, the magistrate judge found "the two actions are between the same parties or parties in privity with them,"

because all defendants named in the action now before the Court were also named as defendants in the state action. (*Id.* at 14.) The magistrate judge also noted that "Plaintiff received a final judgment on the merits," and the state court vacated the rules violation report in issue here. (*See id.*) The magistrate judge found Plaintiff's claim was barred by the doctrine of res judicata (claim preclusion) and recommended Defendants' motion to dismiss be granted. (*Id.* at 15.)

The Court served the Findings and Recommendations on the parties and notified them that any objections were due within 14 days. (Doc. 53 at 15.) The Court advised the parties that the "failure to file objections within the specified time may result in the waiver of rights on appeal." (*Id.* at 15-16, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014).) No objections were filed, and the time to do so has passed.¹

According to 28 U.S.C. § 636(b)(1)(C), this Court performed a de novo review of this case. Having carefully reviewed the matter, the Court concludes the Findings and Recommendations are supported by the record and proper analysis. Thus, the Court **ORDERS**:

- 1. The Findings and Recommendations dated (Doc. 53) are **ADOPTED** in full.
- 2. Defendants' motion to dismiss (Doc. 42) is **GRANTED**.
- 3. The action is **DISMISSED** with prejudice.
- 4. The Clerk of Court is directed to close the case.

IT IS SO ORDERED.

Dated: March 22, 2024

Olnrigh [] MWWM UNITED STATES DISTRICT JUDGE

¹ The USPS returned the Findings and Recommendations served upon Plaintiff as deliverable. However, Plaintiff was served at the address he provided (Doc. 52) and service is deemed "fully effective" pursuant to Local Rule 182(f).