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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALVARO QUEZADA,  
Plaintiff,  
v.  
S. SHERMAN, et al.,  
Defendants.

No. 1:18-cv-00797-DAD-JLT (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS

(Doc. No. 30)

Plaintiff Alvaro Quezada is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action under 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 July 20, 2020, the assigned magistrate judge issued findings and recommendations, finding that plaintiff’s third amended complaint (“TAC”) states cognizable claims of deliberate indifference against defendants Akabike, Ceja, and Harris. (Doc. No. 30.) The magistrate judge further recommended that defendant Sherman and all of plaintiffs’ remaining claims be dismissed for failure to state a cognizable claim and without further leave to amend in light of plaintiff’s unsuccessful attempts to state cognizable claims in that regard. (*Id.* at 1.) The findings and recommendations were served on plaintiff and provided him twenty-one (21) days to file objections. (*Id.* at 14.) On September 28, 2020, plaintiff untimely filed objections to the findings and recommendations. (Doc. No. 33.)

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a  
2 *de novo* review of this case. Having carefully reviewed the file, including plaintiff’s objections,  
3 the court finds the findings and recommendations to be supported by the record and proper  
4 analysis.

5 Out of an abundance of caution, the undersigned has reviewed plaintiff’s untimely  
6 objections to the findings and recommendations. Nevertheless, the undersigned is not persuaded  
7 by those objections. To the extent that plaintiff objects to the magistrate judge’s analysis of his  
8 deliberate indifference claims, those objections are misplaced. (*See* Doc. No. 33 at 1–5.) The  
9 undersigned notes that each of those objections are unnecessary mischaracterizations of the  
10 magistrate judge’s analysis, particularly because the magistrate judge found that plaintiff has  
11 stated cognizable deliberate indifference claims. (*See* Doc. No. 30 at 5–9.) Regarding the  
12 recommended dismissal of his Americans with Disabilities Act (“ADA”) claims, plaintiff argues  
13 that he did not intend to sue defendants in their individual capacities. (Doc. No. 33 at 5.)<sup>1</sup>  
14 Plaintiff also argues that his mistake in that regard does not mean that defendant Akabike did not  
15 commit ADA violations. This argument is unavailing. The magistrate judge noted, and the  
16 undersigned agrees, that plaintiff “does not allege facts that show he was excluded from  
17 participation in, or denied the benefits of, any service or programs offered by the prison because  
18 of his disability, or that he was subjected to any type of discrimination by reason of his  
19 disability.” (*See* Doc. No. 30 at 10.)

20 Accordingly,

- 21 1. The findings and recommendations issued on July 20, 2020 (Doc. No. 30) are  
22 adopted in full;

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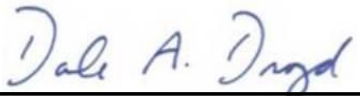
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24 <sup>1</sup> In his objections plaintiff actually states that “plaintiff failed to list the [defendants] in their  
25 individual capacities.” (Doc. No. 33 at 5.) However, the findings and recommendations noted  
26 that plaintiff’s claim is not cognizable in part because he *does* sue defendants in their individual  
27 capacities. (*See* Doc. No. 30 at 10); *Vinson v. Thomas*, 288 F.3d 1145, 1148 (9th Cir. 2002)  
28 (holding that plaintiff could “not pursue a section 1983 claim against [defendant] in her individual  
capacity for her alleged violation of either the ADA or the Rehabilitation Act”). In light of this  
finding, and out of an abundance of caution, the undersigned construes the objection as conveying  
that plaintiff did *not* intend to sue defendants in their individual capacities.

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2. The claims in plaintiff’s third amended complaint—except for plaintiff’s deliberate indifference claims against defendants Akabike, Ceja, and Harris—are dismissed without further leave to amend;
3. Defendant Sherman is dismissed from this action;
4. The Clerk of the Court is directed to change the title of this case to “*Quezada v. Akabike, et al.*” in light of defendant Sherman’s dismissal; and
5. This case is referred back to the assigned magistrate judge for further proceedings.

IT IS SO ORDERED.

Dated: **December 28, 2020**

  
UNITED STATES DISTRICT JUDGE