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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARCOS CASEY GUILLEN, III,
Plaintiff,
v.
SULLIVAN,
Defendant.

No. 1:19-cv-00957-DAD-SKO (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(Doc. No. 7)

Plaintiff Marcos Casey Guillen, III is a state prisoner proceeding *pro se* in this removed action alleging violations of the Fourteenth Amendment and state regulations. 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 January 30, 2020, the assigned magistrate judge issued findings and recommendations, finding that plaintiff had failed to state cognizable claims under Title 15 §§ 3004(a) and 3391(a) of the California Code of Regulations, and recommending that these claims be dismissed, and that this action now proceed only on plaintiff's Fourteen Amendment equal protection claim. (Doc. No. 7.) The findings and recommendations were served on the parties and contained notice that any objections thereto were to be filed within 21 days of service. (*Id.* at 6.) On February 21, 2020, defendant filed untimely objections. (Doc. No. 10.) Plaintiff has not filed any objections.

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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 defendant’s objections,
3 the court finds the findings and recommendations to be supported by the record and proper
4 analysis.


5 In his objections, defendant does not disagree with the analysis set forth in the pending
6 findings and recommendations, and instead requests that should the undersigned issue an order
7 adopting those findings and recommendations, any such order should “reflect a dismissal of the
8 state law claims with prejudice.” (Doc. No. 10.) The court agrees with defendant in this regard.
9 As the findings and recommendations correctly note, the state regulations upon which plaintiff
10 has based his state law claims do not create a private right of action. (Doc. No. 7 at 6.)
11 Accordingly, plaintiff cannot, as a matter of law, assert those claims, and the dismissal of these
12 state law claims will be “with prejudice, as amendment would be futile.” *Lewis v. City & Cty. of*
13 *San Francisco*, No. C 11-5273 PJH, 2012 WL 909801, at *2 (N.D. Cal. Mar. 16, 2012).

14 Accordingly,

- 15 1. The January 30, 2020 findings and recommendations (Doc. No. 7) are adopted in
16 full;
- 17 2. Plaintiff’s claims under California Code of Regulations tit. 15, §§ 3004(a), 3391(a)
18 are dismissed with prejudice;
- 19 3. This case now proceeds only on plaintiff’s Fourteenth Amendment equal
20 protection claim against defendant; and
- 21 4. This case is referred back to the assigned magistrate judge for further proceedings.

22 IT IS SO ORDERED.

23 Dated: April 3, 2020

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26 UNITED STATES DISTRICT JUDGE
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