1 2 3 4 5 6 UNITED STATES DISTRICT COURT 7 EASTERN DISTRICT OF CALIFORNIA 8 9 10 VINCENT TURNER, Case No. 1:20-cv-00184-AWI-EPG (PC) 11 Plaintiff. ORDER ADOPTING FINDINGS AND RECOMMENDATIONS RECOMMENDING 12 THAT DEFENDANTS' MOTIONS FOR v. SUMMARY JUDGMENT BE GRANTED 13 ANDREW ZEPP, et al., (ECF No. 108). 14 Defendants. 15 16 17 Plaintiff Vincent Turner ("Plaintiff") is a state prisoner proceeding pro se and in forma 18 pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. The matter was referred to a 19 United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 20 On October 28, 2021, Defendant Khaled A. Tawansy filed a motion for summary 21 judgment. (ECF No. 72). On November 1, 2021, Defendant Andrew Zepp filed a motion for 22 summary judgment. (ECF No. 74). Plaintiff filed several documents purporting to respond to both 23 motions. (ECF Nos. 78, 91-95). After the Plaintiff was granted to leave to file supplemental 24 briefing in opposition to Defendants' motions, Plaintiff filed a response to Defendant Tawansy's 25 Separate Statement of Undisputed Facts on May 2, 2022. (ECF No. 104). Defendant Tawansy 26 filed a reply and objections to Plaintiff's response on May 11, 2022. (ECF No. 105). Defendant 27 Zepp filed a reply in support of his motion for summary judgment, noting that Plaintiff's

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opposition solely addressed Defendant Tawansy's motion and did not contain any arguments referring to Defendant Zepp. (ECF No. 106).

On July 27, 2022, findings and recommendations were entered, recommending that Defendants' motions for summary judgment be granted. (ECF No. 108). Those findings and recommendations were served on the parties and contained notice that any objections thereto were to be filed within twenty-one (21) days from the date of service. (*Id.*) Any reply to the objections were to be filed within fourteen (14) days after the services of the objections. (*Id.*) On September 8, 2022, Plaintiff filed what appear to be his objections the findings and recommendations. (ECF No. 112).

After the findings and recommendations were entered, Plaintiff filed additional documents seemingly intended to supplement his opposition to Defendants' motions and not directed toward addressing any objections to the findings and recommendations. (*See* ECF Nos. 109, 110). On August 11, 2022, Plaintiff filed a motion for an extension of time to address unidentified "unanswered Response[s]." (ECF No. 109). On August 15, 2022, Plaintiff filed his response to Defendant Tawansy's objections and objections to summary judgment statements. (ECF No. 110). This appears to be an unauthorized and improper sur-reply to Defendant Tawansy's objections to Plaintiff's response (ECF No. 105). Plaintiff was previously advised in the order granting an extension of time to file supplemental briefing in opposition to Defendants' motions that if he needed "additional time to file his opposition . . . he should file a signed motion explaining the reasons for his request before the deadline expires." (ECF No. 103, n.9 at 14). The deadline for Plaintiff to file supplemental briefing in opposition to Defendants' motions was April 7, 2022. (*See* ECF No. 103). However, even if Plaintiff had permission to file his response and the Court considered it, the objections raised by Plaintiff would not change the analysis contained in the findings and recommendations.

On August 19, 2022, Plaintiff filed a motion against judgment which expressed Plaintiff's position that he never consented to having a magistrate judge rule in his case, and that he objected

¹ In his motion for an extension of time, Plaintiff also generally states that he has requested legal assistance, and that he is willing to settle with Defendant Zepp. (ECF No. 109). It is unclear if Plaintiff is renewing his request for the appointment of counsel. Plaintiff's most recent request for counsel was denied on February 11, 2022. (ECF No. 99). Additionally, Plaintiff indicates that he filed a discovery motion requesting phone records for which he did not receive a response. However, Plaintiff's discovery request was denied on March 3, 2022. (See ECF No 103).

to the ruling. (ECF No. 111). The Court notes that this is not a consent case, and as such, the undersigned district judge issues any final dispositional order. In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the findings and recommendations to be supported by the record and proper analysis. Accordingly, IT IS HEREBY ORDERED that: 1. The findings and recommendations issued by the assigned magistrate judge on July 27, 2022 (ECF No. 108), are adopted in full; and 2. Defendants' motions for summary judgment (ECF Nos. 72, 74) are granted; 3. Plaintiff's motion for an extension of time (ECF No. 109) and motion against judgment (ECF No. 111) are denied; and 4. The Clerk of Court is directed to enter judgement in favor of Defendants Zepp and Tawansy and CLOSE this case. IT IS SO ORDERED. Dated: September 14, 2022 SENIOR DISTRICT JUDGE