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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EDWARD VINCENT RAY, JR.,

Plaintiff,

vs.

S. CHEFALO,

Defendant.

1:20-cv-01515-AWI-GSA-PC

**ORDER WITHDRAWING FINDINGS
AND RECOMMENDATIONS ENTERED
ON NOVEMBER 2, 2020
(ECF No. 6.)**

Edward Vincent Ray, Jr. ("Plaintiff") is a state prisoner proceeding *pro se* with this civil rights action pursuant to 42 U.S.C. § 1983.

On November 2, 2020, the court entered findings and recommendations, recommending that Plaintiff's motion to proceed *in forma pauperis*, filed on October 27, 2020 be denied pursuant to 28 U.S.C. § 1915(g) and that Plaintiff be required to pay the \$400.00 filing fee in full

1 before proceeding with this action. (ECF No. 6.) In the findings and recommendations, the court
2 stated that “on three prior occasions, Plaintiff has brought actions while incarcerated that were
3 dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be
4 granted.” (Id. at 3 ¶ 3A.) The three “strikes” found by the court arose from dismissals of three
5 cases: (1) Ray v. Schoo, et al., Case No. 5:10-cv-00942-VAP-PJW (C.D. Cal.) (dismissed on
6 January 2, 2014, for failure to state a claim); (2) Ray v. von Geldern, Case No. 4:12-cv-00315-
7 YGR (N.D. Cal.) (dismissed on October 25, 2012, for failure to state a claim); and (3) Ray v. von
8 Geldern, Appeal Case No. 12-17472, Ninth Circuit Court of Appeals (appellate court denied
9 appeal as frivolous on February 28, 2013). (Id. at ¶ 3.)

10 On November 16, 2020, Plaintiff filed objections to the findings and recommendations.
11 (ECF No. 8.) In the objections, Plaintiff argued that two of the three “strikes” relied upon in the
12 findings and recommendations resulted from cases that had not been filed by Plaintiff.

13 “[Of t]he filings that the Magistrate Judge relied upon, to deem plaintiff to have
14 prior “strikes,” two of those three filings are not by this plaintiff. The Ray v. von
15 Geldern case No. 12-cv-00315-YGR (N.D. Ca.) and the ‘Appeal’ from that case,
16 Ray v. von Geldern Appeal Case No. 12-17472 Ninth Circuit Court of Appeals
17 were in fact filed by this plaintiff’s son/‘codefendant,’ whose CDCR # is F-92909,
18 named Edward Vincent Ray III, and is no longer in custody.”

19 (Id. at ¶1.)

20 The court finds that Plaintiff’s representation is correct and he did not file cases Ray v.
21 von Geldern, Case No. 4:12-cv-00315-YGR (N.D. Cal. 2012), nor Ray v. von Geldern, Appeal
22 Case No. 12-17472 (9th Cir 2012).¹ Therefore, the court shall withdraw the findings and
23 recommendations issued on November 2, 2020.

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26 ¹ The court takes judicial notice of Case no. 4:12-cv-00315-YGR, Ray v. von Geldern, et
27 al. (N.D. Cal. 01/20/12) and Appeal no. 12-17472, Ray v. von Geldern, et al. (9th Cir. 2012). Both of
28 these cases were filed by Edward v. Ray III, CDC #F92909. Pursuant to Federal Rule of Evidence 201(b),
“[t]he court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally
known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from
sources whose accuracy cannot reasonably be questioned.” See also Reyn’s Pasta Bella, LLC v. Visa

