UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH LOPES,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF CORRECTIONS, et al.,

Defendants.

No. 1:22-cv-00162-DAD-BAM (PC)

ORDER ADOPTING FINDINGS AND RECOMMENDATIONS AND DISMISSING CERTAIN CLAIMS AND A DEFENDANT

(Doc. No. 11)

Plaintiff Joseph Lopes is a state prisoner proceeding *pro se* in this civil rights action brought pursuant to 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 April 14, 2022, the assigned magistrate judge screened plaintiff's complaint and found that he had stated cognizable claims against defendant Lima for failure to protect and failure to intervene in violation of the Eighth Amendment of the U.S. Constitution, but that plaintiff had failed to state any other cognizable claims against defendant Lima. (Doc. No. 9 at 7.) The magistrate judge also found that plaintiff had failed to state any cognizable claims against defendant California Department of Corrections, the only other named defendant in this action. (*Id.*) Plaintiff was granted leave to file a first amended complaint in an attempt to cure the cited deficiencies or to notify the court of his willingness to proceed only on the claim found to be

cognizable in the screening order within thirty (30) days of service of that order. (*Id.* at 8.) On May 4, 2022, plaintiff notified the court that he was willing to proceed only on the claims identified by the magistrate judge in the screening order as cognizable. (Doc. No. 10.)

Accordingly, on May 5, 2022, the magistrate judge issued findings and recommendations recommending that this case proceed only on the claims found to be cognizable in the screening order. (Doc. No. 11.) The magistrate judge also recommended that all other claims brought, and all other defendants named, by plaintiff in his complaint be dismissed from this action. (*Id.* at 8.) The findings and recommendations were served on plaintiff and contained notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.*) Plaintiff did not file objections to the pending findings and recommendations. Instead, on May 26, 2022, plaintiff filed a notice to reiterate his willingness to proceed only on the claims found to be cognizable in the screening order and to inform the court that he "accepts" the pending findings and recommendations. (Doc. No. 12.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the findings and recommendations are supported by the record and proper analysis.

Accordingly,

1. The findings and recommendations issued on May 5, 2022 (Doc. No. 11) are adopted in full;
2. This action shall proceed on plaintiff's claims against defendant Lima for failure to protect and failure to intervene in violation of the Eighth Amendment of the U.S. Constitution;
3. All other claims and named defendants are dismissed;
4. The Clerk of the Court is directed to update the docket to reflect that defendant California Department of Corrections has been terminated as a named defendant in this action; and

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5. This action is referred back to the assigned magistrate judge for further proceedings consistent with this order.

IT IS SO ORDERED.

Dated: **May 27, 2022**

Dale A. Drozd
UNITED STATES DISTRICT JUDGE