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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AARON D. SEYMOUR,

Plaintiff,

v.

LEDBETTER,

Defendant.

Case No.: 1:22-cv-00989-JLT-CDB (PC)

**FINDINGS AND RECOMMENDATIONS TO
DISMISS CLAIM THREE IN PLAINTIFF’S
COMPLAINT**

(Docs. 13 & 14)

14-DAY OBJECTION PERIOD

Plaintiff Aaron D. Seymour is proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983.

I. RELEVANT PROCEDURAL BACKGROUND

On May 16, 2023, this Court issued its Order Vacating Findings and Recommendations to Dismiss Claim Three in Plaintiff’s Complaint and First Screening Order. (Doc. 13.) In its First Screening Order, the Court found Plaintiff’s complaint stated cognizable First Amendment retaliation (Claim I) and Eighth Amendment failure to protect (Claim II) claims against Defendant Ledbetter, the sole defendant named in the action. (*Id.* at 3-6.) However, the Court further found that Plaintiff had failed to allege compliance with the Government Torts Claim Act, a prerequisite concerning Plaintiff’s state law claims for slander and/or defamation against Ledbetter. (*Id.* at 6-8.) Plaintiff was granted leave to amend his complaint to cure this deficiency identified in Claim III, assuming he could do so in good faith. (*Id.* at 8.) Specifically, Plaintiff

1 was ordered to do one of the following within 21 days of service of the order: (1) to notify the
2 Court he does not wish to file a first amended complaint and is willing to proceed only on the
3 First Amendment retaliation and Eighth Amendment failure to protect claims against Defendant
4 Ledbetter with the remaining claims against any defendant to be dismissed; or (2) to file a first
5 amended complaint curing the deficiencies identified in the screening order; or (3) to file a notice
6 of voluntary dismissal. (*Id.* at 9.)

7 On May 26, 2023, Plaintiff filed a notice, under penalty of perjury, that he did “not wish
8 to file an amended complaint & would like to proceed only on the First Amendment retaliation &
9 Eighth Amendment failure to protect claims against Defendant Ledbetter.” (*See* Doc. 14.)

10 II. FINDINGS AND RECOMMENDATIONS

11 Accordingly, and for the reasons set forth in the Court’s screening order (Doc. 13), the
12 Court **RECOMMENDS** that:

- 13 1. This action proceed *only* on Plaintiff’s First Amendment retaliation (Claim I) and
14 Eighth Amendment failure to protect (Claim II) claims against Defendant Ledbetter;
15 and,
- 16 2. The remaining claim (Claim III) against Defendant Ledbetter be DISMISSED.

17 These Findings and Recommendations will be submitted to the United States District
18 Judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). Within 14 days of the date of
19 service of these Findings and Recommendations, a party may file written objections with the
20 Court. The document should be captioned, “Objections to Magistrate Judge’s Findings and
21 Recommendations.” Failure to file objections within the specified time may result in waiver of
22 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
23 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

24 IT IS SO ORDERED.

25 Dated: May 31, 2023

26 
UNITED STATES MAGISTRATE JUDGE