

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JULIO SANDOVAL,
Plaintiff,
v.
M. LOPEZ, et al.,
Defendants.

Case No.: 1:23-cv-0248 JLT SKO (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, GRANTING
DEFENDANTS’ MOTION TO DISMISS WITH
LEAVE TO AMEND, AND TERMINATING
PLAINTIFF’S MOTION FOR LEAVE TO
AMEND AS MOOT

(Docs. 24, 43, 44)

Julio Sandoval seeks to hold the defendants liable for violations of his rights under the Eighth Amendment while housed at the California Substance Abuse Treatment Facility. (*See* Doc. 16.) Defendants moved to dismiss Plaintiff’s first amended complaint, asserting Plaintiff failed to state a cognizable claim and Defendants are entitled to qualified immunity. (Doc. 24.)

The magistrate judge found Plaintiff failed to sufficiently allege that Defendants acted with deliberate indifference. (Doc. 43 at 8-13.) Therefore, the magistrate judge recommended the Court grant the motion to dismiss. (*Id.* at 13.) Based upon the finding that dismissal for failure to state a claim was appropriate, the magistrate judge declined to address the issue of qualified immunity. (*Id.* at 13-14.) The magistrate judge observed that Plaintiff filed the FAC before the Court had an opportunity to screen the original complaint, and Plaintiff was “not previously... advised of any defects in a complaint.” (*Id.* at 14, n. 5.) Accordingly, the magistrate judge recommended Plaintiff be granted leave to amend. (*Id.* at 14.)

1 The Court served the Findings and Recommendations on the parties and notified them that
2 any objections were due within 14 days. (Doc. 43 at 14.) The Court advised the parties the
3 “failure to file objections within the specified time may result in the waiver of certain rights on
4 appeal.” (*Id.* at 14-15, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014).)
5 Neither Plaintiff nor Defendants filed objections, and the time to do so has expired. However,
6 Plaintiff filed a motion for leave to amend his complaint on December 30, 2024, which includes a
7 request that he be granted 60 days to amend. (Doc. 45.)

8 According to 28 U.S.C. § 636(b)(1), this Court performed a *de novo* review of this case.
9 Having carefully reviewed the matter, the Court concludes the Findings and Recommendations
10 are supported by the record and proper analysis. Thus, the Court **ORDERS**:

- 11 1. The Findings and Recommendations issued on December 17, 2024 (Doc. 43) are
12 **ADOPTED** in full.
- 13 2. Defendants’ motion to dismiss (Doc. 24) is **GRANTED**, with leave to amend.
- 14 3. Plaintiff is **GRANTED** leave to file a second amended complaint within 60 days
15 of the date of this order.
- 16 4. The motion for leave to amend (Doc. 45) is terminated as **MOOT**.

17 **Failure to file an amended complaint as ordered will result in dismissal without**
18 **prejudice failure to prosecute and failure to obey the Court’s order.**

19 IT IS SO ORDERED.

20 Dated: **January 8, 2025**

21 
22 **UNITED STATES DISTRICT JUDGE**