IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDREW R. LOPEZ,

Plaintiff, 2:03-cv-1605-GEB-DAD-P

vs.

S. COOK, et al.,

Defendants. ORDER

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Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On September 29, 2008, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty days. Plaintiff has filed objections to the findings and recommendations.[1]

[1] Plaintiff filed objections on October 24, 2008 and on November 26, 2008, plaintiff filed a request to supplement his objections. The request will be granted. The court has considered the objections contained in plaintiff's supplemental objections which were filed with his request.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, 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 by proper analysis.

In his objections, plaintiff has also requested the appointment of counsel. For the reasons set forth in the magistrate judge's orders denying the appointment of counsel, plaintiff's requests will be denied. See Orders, filed 5/22/07 and 10/25/07.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's November 26, 2008 request to supplement his objections (Docket No. 181) is granted.

2. The findings and recommendations filed September 29, 2008, are adopted in full;

3. Defendants' October 11, 2007 motion for summary judgment (Docket No. 157) is granted in part and denied in part.

4. Defendants' motion for summary judgment is granted with respect to:

a. Plaintiff's claim that his placement and retention in administrative segregation was retaliatory as to defendants Adams, Babich, Bartos, Gilliam, Harrison, Holmes, Johnson, McClure, McKean, Martinez, Morton, Nergenah, Shaver, Statti and Vanderville;

b. Plaintiff's claim that the defendants acted in a retaliatory fashion when they participated in his validation as a gang member;

c. Plaintiff's claim that defendants acted in a retaliatory fashion in issuing the three rules violation reports;

d. Plaintiff's claims in his first and seventh causes of action that defendants acted in a retaliatory fashion in several other instances listed in those claims;

e. Plaintiff's fifth and sixth causes of action;

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f. Plaintiff's twelfth, fourteenth, sixteenth, seventeenth, eighteenth, nineteenth and twentieth causes of action; and

g. The substantive due process aspect of plaintiff's fifteenth cause of action attacking the sufficiency of the evidence relied upon for his gang validation.

5. Defendants' motion for summary judgment is denied with respect to:

a. Plaintiff's retaliation claim against defendants Garate and Cook with respect to his placement and retention in administrative segregation;

b. Plaintiff's tenth cause of action in which he alleges that defendant Bartos retaliated against him for engaging in protected legal activity by falsely labeling him; and

c. All procedural due process aspects of plaintiff's fifteenth cause of action challenging his initial placement and retention in administrative segregation and his ultimate gang validation.

6. Plaintiff's October 24, 2008 requests for the appointment of counsel (Docket No. 179 and 180) are denied.

7. Plaintiff's October 24, 2008 request for summary judgment (Docket No. 180) is denied.

Dated: January 15, 2009

GARLAND E. BURRELL, JR.
United States District Judge