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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIC CHARLES RODNEY KNAPP, No. CIV S-05-2520-KJM-CMK-P

Plaintiff,

vs.

ORDER

RODERICK HICKMAN, et al.,

Defendants.

_____ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 7, 2011, the court declined to adopt a portion of the magistrate judge’s earlier findings and recommendations on defendants’ motion for summary judgment and referred that portion to the magistrate judge.

On July 7, 2011, the magistrate judge filed further findings and recommendations, which were served on the parties and which contained notice that the parties may file objections within a specified time. Plaintiff has filed timely objections to the findings and recommendations.

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule
2 304, this court has conducted a *de novo* review of this case. Having carefully reviewed the file,
3 the court finds the findings and recommendations as to claim 9 in the amended complaint to be
4 supported by the record and proper analysis. As the magistrate judge notes, the plaintiff does not
5 clearly say in claim 9 that he was threatened with or subjected to disciplinary proceedings, but
6 rather that MAC members generally were threatened. Although this court must view plaintiff's
7 allegations in the light most favorable to his claim and must construe his claims liberally, liberal
8 construction does not allow it to fill in the gaps of plaintiff's pleadings. *Pena v. Gardner*, 976
9 F.2d 469, 471 (9th Cir. 1992) (liberal interpretation of a pro se complaint "'may not supply
10 essential elements of the claim that were not initially pled'" (quoting *Ivey v. Board of Regents*,
11 673 F.2d 266, 268 (9th Cir. 1982))). Defendants are entitled to summary judgment on claim 9.

12 In claims 10m, o and x plaintiff alleges that defendants Etheredge, Gutierrez,
13 Hogan, Lattimore, Poe and Warren caused plaintiff "to suffer retaliatory and false disciplinary
14 action;" that "during the 'investigation' supposedly conducted on Plaintiff's behalf by an
15 assigned guard," defendants Etheredge, Gutierrez, Hogan, Lattimore, Poe and Warren prevented
16 plaintiff's inmate witnesses from answering plaintiff's questions, through his investigator; and
17 that on April 29, 2003, Etheredge, Gutierrez, Lattimore and Warren "caused plaintiff to be
18 transferred to a higher-security prison." The court has reviewed the magistrate judge's original
19 findings and recommendations and the renewed findings and recommendations and finds the
20 latter supported by the proper analysis as to claims 10m, o and x. The magistrate judge explains
21 that defendants had presented evidence showing they relied on several sources of information in
22 pursuing disciplinary proceedings and in determining to transfer plaintiff to a different
23 institution, which shifted the burden to plaintiff to demonstrate the absence of a legitimate
24 penological purpose; defendants did not rely merely on the outcome of a neutral process, as in
25 *Bruce v. Ylst*, 351 F.3d 1283, 1289 (9th Cir. 2003). *See generally* ECF No. 201-8

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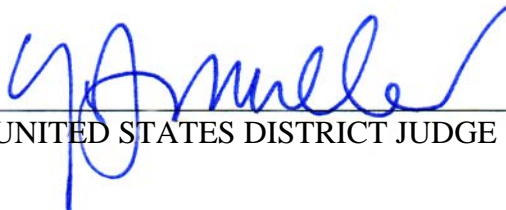
1 ¶¶ 16-29. In sum, the findings and recommendations as to claims 10m and x are supported by
2 the record and proper analysis.

3 Finally, plaintiff has presented no evidence that the defendants threatened inmate
4 witnesses whom plaintiff sought to have interviewed in connection with the then-pending
5 disciplinary proceedings. This portion of the findings and recommendations as to claim 10o is
6 also supported by the record and by proper analysis.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The findings and recommendations filed July 7, 2011, are adopted in full;
- 9 2. Defendants' motions for summary judgment (ECF Nos. 201, 238) are
10 granted;
- 11 3. Plaintiff's motion to strike is granted (ECF No. 220); and
- 12 4. The Clerk of the Court is directed to enter judgment and close this case.

13 DATED: September 30, 2011.

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17 UNITED STATES DISTRICT JUDGE
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