IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

STEVE MARTINEZ,

Plaintiff,

vs.

JOHN ZIOMEK, et al.,

Defendants.

/

No. CIV S-08-674-LKK-CMK-P

ORDER

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to Eastern District of California local rules.

On March 4, 2010, the Magistrate Judge filed findings and recommendations herein which were served on the parties and which contained notice that the parties may file objections within a specified time. No objections to the findings and recommendations have been filed.[1]

The court has reviewed the file and finds the findings and recommendations to be supported by the record and by the Magistrate Judge's analysis. As to the allegations against defendant Smith, while the Magistrate Judge noted in passing that "interference with the [prison] grievance process *may, in certain circumstances*, implicate the First Amendment," the court

[1] Plaintiff filed a request for additional time in which to file his objections. This requested was, however, denied.

clarifies that the allegations here do not fit those circumstances. Findings and Recommendations filed March 4, 2010 at 11:12-13. Plaintiff has alleged that Smith wrongfully denied grievances, but he has not alleged that Smith prevented plaintiff from filing grievances in the first place, or that Smith's actions amounted to a cognizable impediment to plaintiff's access to the courts.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed March 4, 2010, are adopted in full;

2. Defendants' motion to dismiss (Doc. 30) is granted;

3. Defendants Williams and Smith are dismissed from this action for failure to state a claim;

4. Plaintiff's claims are limited to those regarding his ankle which arose between November 11, 2005, and March 2008;

5. The dismissal of defendant Todd is confirmed;

6. This action shall proceed against defendants Hashimoto and Ziomek only;

7. Defendants' motion to dismiss the original complaint (Doc. 22) is denied as moot; and

8. Defendants Hashimoto and Ziomek are directed to file an answer within 20 days of this order.

DATED: March 30, 2010.

LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT