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

11 ALEX K. ROSS,

No. CIV S-09-0984-KJM-CMK-P

Plaintiff,

vs.

<u>ORDER</u>

14 | A. DAVID, et al.,

Defendants.

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 as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 11, 2011, the magistrate judge filed findings and recommendations, which were served on the parties and which contained notice to the parties that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff has timely filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having carefully reviewed the file, the court finds the findings and recommendations to be supported by the record and by the

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proper analysis, with one exception. The findings and recommendations recommend that this action be closed. However, after issuing the findings and recommendations, the magistrate judge granted plaintiff's request to attempt to re-serve defendant David. As such, it is not appropriate to close this case at this time. Instead, judgment will be entered as to the moving defendants, and this action will continue as to defendant David only.

The court notes that in his objections, plaintiff claims that this action was filed under 42 U.S.C. § 1983 and 42 U.S.C. § 12102, the Americans With Disabilities Act, and that his complaint shows, among other things, that defendants were "uncaring as to his medical needs for an accommodation under the American's [sic] with Disabilities Act. ECF No. 45 at 2. Plaintiff did attach a copy of a request for a modification or accommodation under the ADA as an exhibit, but did not refer to the ADA in the body of the complaint. *Compare* ECF No. 1 at 17 (ADA request) and id. at 1 ("this is an action brought pursuant to 42 U.S.C. §1983"; "this is a claim for named damages and injunctive relief brought under 42 U.S.C. § 1983"). In addition, in his screening order, the magistrate judge found only that the complaint appeared to state a cognizable claim under 42 U.S.C. § 1983. ECF No. 7 at 2. This court thus declines to consider any ADA claims plaintiff is attempting to raise in his objections. *Jones v. Blanas*, 393 F.3d 918, 935 (9th Cir. 2004).

Accordingly, IT IS HEREBY ORDERED that:

- 1. The findings and recommendations filed February 11, 2011, are adopted;
- 2. Defendants' motion for summary judgment (Doc. 27) is granted;
- 3. Plaintiff's motion for summary judgment (Doc. 33) is denied;
- 4. Judgment shall be entered in favor of the moving defendants; and
- 5. This action shall proceed as to defendant David only.

DATED: August 13, 2011.

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UNITED STATES DISTRICT JUDGE