

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

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

XAVIER DMETRI NAILING,

No. 2:09-cv-02475-MCE-CMK

Plaintiff,

vs.

ORDER

B.D. FOSTERER, et al.,

Defendants.

_____ /

Plaintiff, a former 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 2, 2012, 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.

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 entire file, the Court finds the findings and recommendations to be supported by the record and by proper analysis.

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The findings and recommendations filed March 2, 2012 (ECF No. 78), are
3 ADOPTED in full;
- 4 2. Defendants' motion to strike (ECF No. 63) is GRANTED;
- 5 3. Plaintiff's sur-reply filed on October 7, 2011 (ECF No. 62), is stricken;
- 6 4. Defendant Bemrick's motion to dismiss (ECF Nos. 29 & 67) is GRANTED;
- 7 5. The remaining defendants' motion to dismiss (ECF No. 45) is GRANTED in part
8 and DENIED in part;
- 9 6. Defendants Bemrick, Torruella, Cardeno, Lewis, and Lucas are DISMISSED;
- 10 7. Defendant Bemrick's motion for summary judgment (ECF No. 70) is DENIED as
11 moot; and
- 12 8. This action proceeds on the first amended complaint as against defendants
13 Forsterer, Coughlin, Holman, Brown, Stotz, Pruitt, and Vasquez, who shall file an answer to the
14 amended complaint within 30 days of the date of this order.

15
16 Dated: March 29, 2012

17 
18 MORRISON C. ENGLAND, JR.
19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26