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

RANDY REAL,

Plaintiff,

No. 2:09-cv-3273 GEB KJN P

vs.

JAMES WALKER, Warden, et al.,

Defendants.

ORDER

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On March 30, 2012, the district judge, after reviewing plaintiff’s objections, adopted the undersigned’s findings and recommendations, thereby granting in part and denying in part defendants’ motion to dismiss filed April 22, 2011. (See Dkt. No. 47.) Pursuant to that order, plaintiff’s First Amended Complaint was dismissed with leave to file and serve, within 30 days, a Second Amended Complaint limited to the defendants and claims found cognizable by the court.<sup>1</sup>

<sup>1</sup> The court’s order included the following pertinent rulings (Dkt. No. 47 at 2):

... 3. Defendants Tilton, Baughman, Hemenway, Sims, Virga, Till, Hill, and Parker are dismissed from this action;

4. This action shall proceed against defendants Ramos, Stewart, Ventimiglia, Parilla, Pool, Grannis, Walker, Fisher, Kisser, and Williams;

1           Thereafter, plaintiff sought an extension of time within which to file further  
2 objections (Dkt. No. 48), which the undersigned denied without prejudice to plaintiff filing a  
3 motion for relief from the district judge's order pursuant to Federal Rule of Civil Procedure 60(b)  
4 (Dkt. No. 49). Nevertheless, plaintiff thereafter filed objections to the findings and  
5 recommendations (Dkt. No. 50), which defendants opposed (Dkt. No. 51); then plaintiff filed a  
6 motion for relief from the district judge's order (Dkt. No. 52). Plaintiff has now filed a letter  
7 (Dkt. No. 54), requesting that his motion for relief from the district judge's order (Dkt. No. 52)  
8 be disregarded, and that plaintiff be permitted to proceed with the filing of his Second Amended  
9 Complaint (referenced in Dkt. No. 53).

10           For good cause shown, IT IS HEREBY ORDERED that:

11           1. Plaintiff's request (Dkt. No. 54) that his motion for relief from the district  
12 judge's order (Dkt. No. 52) be disregarded, is granted; the Clerk of Court shall note that the  
13 subject motion (Dkt. No. 52) is withdrawn;

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17           5. Plaintiff's First Amended Complaint is dismissed, with leave to file and serve,  
18 within thirty days after the adoption of these findings and recommendations, a  
19 Second Amended Complaint limited to the claims and defendants identified  
20 herein; and

21           6. Failure of plaintiff to timely file and serve a Second Amended Complaint  
22 will result in the dismissal of this action.

23           As set forth in the court's findings and recommendations, plaintiff may assert only the  
24 following claims in his Second Amended Complaint (Dkt. No. 43 at 28):


25           (1) two Fourteenth Amendment Due Process claims premised, respectively, on  
26 plaintiff's challenges to the denial of an IE, and the merits of his gang validation  
/SHU placement (thus reflecting plaintiff's due process claims currently set forth  
in his Second, Sixth, Ninth, Eleventh, Twenty-Fourth, and Twenty-Seventh  
Causes of Action); (2) one First Amendment claim, based on the alleged denial of  
plaintiff's rights to free speech and association (as currently reflected in plaintiff's  
Fourth, Seventh and Eighteenth Causes of Action); and (3) one Eighth  
Amendment claim, based on the allegedly unique conditions of plaintiff's SHU  
placement.

1                   2. Plaintiff shall file and serve his Second Amended Complaint within twenty-  
2 one (21) days after service of this order; and

3                   3. Failure of plaintiff to timely file and serve a Second Amended Complaint  
4 will result in the dismissal of this action.

5                   SO ORDERED.

6 DATED: May 29, 2012

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9 KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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