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

KEITH LOLLIS,

No. 2:09-cv-03558-MCE-GGH P

Petitioner,

vs.

ORDER

J. W. HAVILAND, et al.,

Respondents.

_____ /

Petitioner, a state prisoner proceeding pro se, has filed this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 7, 2010, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Respondent has filed objections to the findings and recommendations.

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1 On October 27, 2010, this Court asked for additional information from the parties in light
2 of the Ninth Circuit's decision in Hayward v. Marshall, 603 F.3d 546 (9th Cir. 2010). Hayward
3 has since been abrogated by the United States Supreme Court. Swarthout v. Cooke, No. 10-333,
4 562 U.S. ____ (Jan. 24, 2011).


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

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. The findings and recommendations filed September 7, 2010, are adopted in full;
- 11 2. Respondent's March 22, 2010, motion to dismiss (ECF No. 11) is granted in part, in
12 that petitioner's claim regarding the BPH violating its own regulations and his First Amendment
13 claim is stricken. This petition will continue on claims that 1) the BPH's failure to find
14 petitioner suitable for parole violated his due process rights because it was not supported by
15 'some evidence;' and 2) the BPH's decision to defer petitioner's next parole consideration for
16 four years violated his due process rights under the Fourteenth Amendment; and
- 17 3. The Court's previous Order requiring additional briefing is VACATED as moot in
18 light of Swarthout. To the extent the new Supreme Court decision affects Petitioner's claims,
19 additional Findings and Recommendations will address the issues in turn.

20 IT IS SO ORDERED.

21 Dated: January 28, 2011

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23 _____
24 MORRISON C. ENGLAND, JR.
25 UNITED STATES DISTRICT JUDGE
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