IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL THOMAS HARVEY,

Plaintiff, No. 2:10-cv-1653-KJM-EFB PS

vs.

CITY OF SOUTH LAKE TAHOE; et al.,

Defendants.

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DANIEL THOMAS HARVEY,

Plaintiff, No. 2:12-cv-526-KJM EFB PS

vs.

CITY OF SOUTH LAKE TAHOE; et al.,

Defendants. ORDER

_____/

On February 21, 2013, the magistrate judge filed findings and recommendations in the above-captioned cases, which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within fourteen days.

Plaintiff filed objections on March 6, 2013[1], and defendants filed responses thereto on March 13, 2013. Also, on March 22, 2013, plaintiff filed a motion for recusal of the assigned magistrate judge. The undersigned has considered all of these filings.

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 proper analysis. The court also finds that plaintiff has not demonstrated that recusal of the assigned magistrate judge is warranted.

Accordingly, with regard to plaintiff's first action, 2:10-cv-1653-KJM-EFB, IT IS HEREBY ORDERED that:

1. The Findings and Recommendations filed February 21, 2013, are ADOPTED.

2. Defendants' motion to dismiss, Dckt. No. 63, is granted, with leave to amend as provided in the magistrate judge's findings and recommendations. Specifically, plaintiff is permitted to amend his § 1983 *Monell* claim against the City and his § 1983 claim against defendants Eissinger and Duke. He is further permitted to include in any fourth amended complaint his § 1983 claims against defendants Herminghaus and Laney and/or a § 1983 *Monell* claim against El Dorado County based *only* on the County's alleged failure to provide him water and the alleged resulting shoulder injury while in the jail after the Brick Incident.

3. Plaintiff is provided forty-five days from the date of this order to file a fourth amended complaint as narrowed above. If plaintiff does not file a fourth amended complaint within the time prescribed, the assigned magistrate judge may recommend that this action be dismissed for failure to prosecute.

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[1] Although plaintiff's objections were only filed in Case No. 2:10-cv-1653-KJM-EFB PS, the court has reviewed them as they apply to the magistrate judge's recommendations in both of the above-captioned cases.

4. Plaintiff's motion for recusal of the assigned magistrate judge, Dckt. No. 77, is denied.

With regard to plaintiff's second action, 2:12-cv-526-KJM-EFB, IT IS FURTHER ORDERED that:

1. Each of the three motions to dismiss, Dckt. Nos. 4, 8, and 19, are granted without leave to amend.[2]

2. The Clerk is directed to close case no. 2:12-cv-526-KJM-EFB PS.

DATED: March 30, 2013.

UNITED STATES DISTRICT JUDGE

[2] As noted in the magistrate judge's findings and recommendations, some of the claims in plaintiff's second action may be asserted in any fourth amended complaint filed in the first action.