UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

LUIS REYNALDO JOHNSON, Plaintiff, v. D. CLAYS et al., Defendants.	No. 2:11-cv-2881 TLN DAD P ORDER AND FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action seeking relief under 42 U.S.C. § 1983. This matter is before the court on a motion for summary judgment brought pursuant to Rule 56 of the Federal Rules of Civil Procedure on behalf of defendants Baker and Speer. Plaintiff has filed an opposition to the motion, and defendants have filed a reply.

For the reasons discussed below, the undersigned will recommend that defendants' motion for summary judgment be granted.

BACKGROUND

Plaintiff is proceeding on a first amended complaint against correctional officers Baker and Speer. Therein, plaintiff alleges that defendants Baker and Speer conducted a cell search and seized his legal papers and typewriter because plaintiff had previously filed an inmate appeal against defendants' fellow correctional officer and because he acts as a jailhouse lawyer and has assisted fellow inmates in filing lawsuits against prison staff. (Doc. Nos. 24, 25 & 29)

SUMMARY JUDGMENT STANDARDS UNDER RULE 56

Summary judgment is appropriate when the moving party "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

Under summary judgment practice, the moving party "initially bears the burden of proving the absence of a genuine issue of material fact." In re Oracle Corp. Securities Litigation, 627 F.3d 376, 387 (9th Cir. 2010) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). The moving party may accomplish this by "citing to particular parts of materials in the record, including depositions, documents, electronically store information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admission, interrogatory answers, or other materials" or by showing that such materials "do not establish the absence or presence of a genuine dispute, or that the adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1)(A), (B).

When the non-moving party bears the burden of proof at trial, "the moving party need only prove that there is an absence of evidence to support the nonmoving party's case." Oracle Corp., 627 F.3d at 387 (citing Celotex, 477 U.S. at 325.). See also Fed. R. Civ. P. 56(c)(1)(B). Indeed, summary judgment should be entered, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. See Celotex, 477 U.S. at 322. "[A] complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Id. In such a circumstance, summary judgment should be granted, "so long as whatever is before the district court demonstrates that the standard for entry of summary judgment, . . ., is satisfied." Id. at 323.

If the moving party meets its initial responsibility, the burden then shifts to the opposing party to establish that a genuine issue as to any material fact actually does exist. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to establish the existence of this factual dispute, the opposing party may not rely upon the allegations or denials of its pleadings but is required to tender evidence of specific facts in the form of affidavits, and/or

admissible discovery material, in support of its contention that the dispute exists. See Fed. R. Civ. P. 56(c)(1); Matsushita, 475 U.S. at 586 n.11. The opposing party must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome of the suit under the governing law, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could return a verdict for the nonmoving party, see Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1436 (9th Cir. 1987).

In the endeavor to establish the existence of a factual dispute, the opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient that "the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." T.W. Elec. Serv., 809 F.2d at 631. Thus, the "purpose of summary judgment is to 'pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.'" Matsushita, 475 U.S. at 587 (citations omitted).

"In evaluating the evidence to determine whether there is a genuine issue of fact," the court draws "all reasonable inferences supported by the evidence in favor of the non-moving party." Walls v. Central Costa County Transit Authority, 653 F.3d 963, 966 (9th Cir. 2011). It is the opposing party's obligation to produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff'd, 810 F.2d 898, 902 (9th Cir. 1987). Finally, to demonstrate a genuine issue, the opposing party "must do more than simply show that there is some metaphysical doubt as to the material facts . . . . Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" Matsushita, 475 U.S. at 587 (citation omitted).

OTHER APPLICABLE LEGAL STANDARDS

I. Civil Rights Act Pursuant to 42 U.S.C. § 1983

The Civil Rights Act under which this action was filed provides as follows:

> Every person who, under color of [state law] . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the

> Constitution . . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

Moreover, supervisory personnel are generally not liable under § 1983 for the actions of their employees under a theory of respondeat superior and, therefore, when a named defendant holds a supervisorial position, the causal link between him and the claimed constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations concerning the involvement of official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

II. The First Amendment and Retaliation

Both the initiation of litigation before the court and the filing of inmate appeals are protected conduct, and prison officials may not retaliate against prisoners for engaging in these activities. See Rhodes v. Robinson, 408 F.3d 559, 568 (9th Cir.2005). As the Ninth Circuit has explained:

> Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal.

Rhodes, 408 F.3d at 567–68. See also Silva v. Di Vittorio, 658 F.3d 1090, 1104 (9th Cir. 2011) (prisoners retain First Amendment rights not inconsistent with their prisoner status or penological objectives, including the right to file inmate appeals and the right to pursue civil rights litigation).

DEFENDANTS' STATEMENT OF UNDISPUTED FACTS AND EVIDENCE

Defense counsel has submitted a statement of undisputed facts supported by declarations signed under penalty of perjury by defendants Baker and Speer. That statement of undisputed facts is also supported by citations to plaintiff's amended complaint, plaintiff's deposition testimony, a copy of plaintiff's property card, and copies of the relevant cell search forms. The evidence submitted by the defendants in support of their pending motion for summary judgment establishes the following.

1. Plaintiff Johnson is an inmate, incarcerated at Mule Creek State Prison ("MCSP"), alleging that defendants Baker and Speer, who are correctional officers at MCSP, retaliated against him in violation of the First Amendment by searching his cell and seizing his property on May 7, 2010, because plaintiff had filed an inmate appeal against Correctional Officer Clays, and because plaintiff had acted as a jail-house lawyer in assisting other inmates in bringing lawsuits against prison staff. (Pl.'s Am. Compl. at 3, 7.)
2. In May 2010, cell searches were conducted on a regular basis at MCSP in order to determine whether any illegal activities were occurring inside the cells and whether the inmates were in possession of any items which would be considered contraband. (Baker Decl., Speer Decl.)
3. Items of personal property found in a cell which were not owned by an inmate could be considered stolen property and would constitute contraband for this reason. (Baker Decl., Speer Decl.)
4. If an inmate's ownership of a personal property item could not be confirmed at the time of a cell search, the item would then be seized until ownership could be confirmed. If it was confirmed that the inmate did own the item, which did not otherwise constitute contraband, that item would be returned to the inmate. (Baker Decl., Speer Decl.)
5. In May 2010, defendants Baker and Speer were correctional officers, assigned to the Investigative Services Unit ("ISU") at MCSP. (Baker Decl., Speer Decl.)

/////

6. In May 2010, the job duties of defendants Baker and Speer included investigating narcotics trafficking and criminal activity inside the institution and conducting cell searches and property inspections. (Baker Decl., Speer Decl.)
7. In May 2010, defendants Baker and Speer received instructions on which cells to search from their supervisors. (Baker Decl., Speer Decl.)
8. On May 7, 2010, defendants Baker and Speer received instructions from then-Sergeant Hobbs and then-Lieutenant Cantu to search cell 248, which was occupied by plaintiff and his cellmate Aaron, and to seize all paperwork and typewriters found in that cell. (Baker Decl., Speer Decl.)
9. Defendants Baker and Speer were not told that the reason for searching plaintiff's cell was to retaliate against plaintiff for filing a CDCR form 602 Inmate/Parolee Appeal against Officer Clays, because the inmates had complained about prior cell searches, or because plaintiff had acted as a "jailhouse lawyer." (Baker Decl., Speer Decl.)
10. Neither defendants Baker nor Speer was aware that plaintiff had submitted a CDCR form 602 Inmate/Parolee Appeal against Officer Clays. (Baker Decl., Speer Decl.)
11. While searching plaintiff's cell, defendants Baker and Speer understood that they were to confiscate any items which might constitute contraband under CDCR policies, as they would when conducting any cell search. (Baker Decl., Speer Decl.)
12. On May 7, 2010, defendants Baker and Speer proceeded to cell 248, informed plaintiff and his cellmate that their cell was going to be searched, performed a clothed body search on each inmate, and instructed plaintiff and his cellmate to proceed to the dayroom for their section while the search of their cell was being conducted. (Baker Decl., Speer Decl.)
13. Upon searching cell 248, defendants Baker and Speer observed the presence of two Brother brand typewriters, along with miscellaneous paperwork, compact disc diskettes, pornography, inoperable electronic devices and parts, inmate-manufactured lights, and pills not in a container, and confiscated these items. (Baker Decl. & Ex. 1, Speer Decl. & Ex. 1.)

14. Defendants Baker and Speer then delivered the items seized from cell 248 to their supervisors, Hobbs and Cantu. (Baker Decl., Speer Decl.)

15. After the cell search was completed and as defendants were carrying the property seized away, plaintiff and his cellmate questioned why the typewriters were being seized when one of them had been recently seized by correctional officers and returned. (Baker Decl.)

16. Defendant Baker responded by stating that "everyone has a boss," because he was acting at the direction of his supervisors. (Baker Decl.)

17. The typewriter which had been seized by Officer Clays and subsequently returned belonged to plaintiff's cellmate. (Pl.'s Dep. at 102:25-103:2, Pl.'s Am. Compl. Ex. 1 at 12.)

18. During the cell search on May 7, 2010, neither defendants Baker nor Speer referred to plaintiff as a "jailhouse lawyer." (Pl.'s Dep. at 49:8-50:12.)

19. Plaintiff's Property Card maintained by CDCR refers to a Cannon brand typewriter but does not refer to a Brother brand typewriter. (Defs.' Ex. D at 2, Pl.'s Am. Compl. Ex. 1.)

20. When plaintiff's cell had been searched earlier by Officer Clays on March 25, 2010, Officer Clays found an altered Sony TV with no serial number and security tape which had been removed, an ETRON CD Walkman on which the names of other inmates had been removed and to which plaintiff's name had been added, and a Cannon brand typewriter which did not belong to plaintiff. (Pl.'s Am. Compl. Ex. 1 at 11.)

21. Once it had been confirmed that the typewriters seized on May 7, 2010, were owned by the inmates, the typewriters and paperwork were returned to plaintiff on May 13, 2010. (Baker Decl., Speer Decl.)

22. Plaintiff is not asserting a claim for the items which were seized from his cell on May 7, 2010, but rather is asserting only a claim for violation of his First Amendment rights. (Pl.'s Dep. at 106:24-107:3.)

23. In conducting the search of plaintiff's cell on May 7, 2010, defendants Baker and Speer intended to comply with orders given to them by their supervisors – to verify that no improper activities were taking place in that cell and that no contraband was present there.

They did not intend to retaliate against plaintiff. (Baker Decl., Speer Decl.)

ANALYSIS

Based on the undisputed evidence submitted in connection with the pending motion, the undersigned finds that the defendants are entitled to summary judgment in their favor on the merits of plaintiff's First Amendment retaliation claim. As an initial matter, the undersigned finds that based on the evidence submitted on summary judgment and described above, the defendants have borne their initial burden of demonstrating that there is no genuine issue of material fact with respect to plaintiff's First Amendment claim. Specifically, the evidence submitted by defendants in support of their motion for summary judgment demonstrates that the defendants did not search plaintiff's cell or confiscate plaintiff's property because he had filed an inmate appeal against their fellow officer or because of his jailhouse lawyer activities. See Rhodes, 408 F.3d at 567–68.

In light of the evidence submitted by the defendants in support of the pending motion for summary judgment, the burden shifts to plaintiff to establish the existence of a genuine issue of material fact with respect to his retaliation claim. The court has reviewed plaintiff's amended complaint, his deposition testimony, and his opposition to defendants' pending motion. On defendants' motion for summary judgment the court is required to believe plaintiff's evidence and draw all reasonable inferences from the facts before the court in plaintiff's favor. Drawing all reasonable inferences in plaintiff's favor, the court finds that plaintiff has not provided the court with any sufficient evidence suggesting that defendants Baker and Speer searched his cell and confiscated his property because of his protected conduct.

As an initial matter, plaintiff has not presented any evidence to show that defendants Baker and Speer were aware that plaintiff had engaged in protected conduct. See Wood v. Yordy, 753 F.3d 899, 905 (9th Cir. 2014) (a district court properly granted summary judgment in favor of defendant on plaintiff's claim that he had been retaliated against by prison officials due to his filing of a lawsuit because there was no evidence presented showing that the defendants knew about prisoner's earlier lawsuit); Quiroz v. Horel, 85 F. Supp.3d 1115,___, 2015 WL 1485024, at *6 (N.D. Cal. Mar. 31, 2015) (granting summary judgment in favor of defendants on a prisoner

plaintiff's retaliation claims for the same reason). Specifically, plaintiff has not come forward with any evidence showing that the defendants even knew he had filed an inmate appeal against their fellow officer, Clays. According to plaintiff's opposition papers, Sergeant Feltner, Captain Harrington, and Associate Warden Kaplan addressed plaintiff's inmate appeal involving officer Clays. (Pl.'s Opp'n to Defs.' Mot. for Summ. J., Ex. A.) Plaintiff does not contend that either of the defendants was involved in addressing that inmate appeal. Nor has plaintiff presented any evidence showing that defendants Baker and Speer knew that plaintiff was a jailhouse lawyer. In fact, plaintiff testified at his deposition that neither defendant had ever referred to him as a "jailhouse lawyer." (Pl.'s Dep. at 49:8-50:12.) At most, plaintiff merely contends that ISU officers are "acutely aware" that he has assisted other inmates in legal matters against ISU officers. (Pl.'s Decl. at 3.) However, plaintiff does not explain how he knows what ISU officers, and defendants Baker and Speer in particular, know with respect to his jailhouse lawyer activities. See Nigro v. Sears, Roebuck & Co., 784 F.3d 495, 497-98 (9th Cir. 2015) (citing Villiarimo v. Aloha Island Air, 281 F.3d 1054, 1059 n. 5, 1061 (9th Cir. 2002) (affirming a grant of summary judgment and concluding that the district court properly disregarded a declaration submitted by plaintiff that included facts beyond the declarant's personal knowledge and did not indicate how she knew the facts to be true) and F.T.C. v. Publ'g Clearing House, Inc., 104 F.3d 1168, 1171 (9th Cir. 1997) (a conclusory affidavit, lacking detailed facts and supporting evidence, does not create a genuine issue of material fact on summary judgment)); see also Fed. R. Civ. P. 56(c)(4) ("An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.").

Moreover, a viable retaliation claim requires that plaintiff point to some evidence demonstrating causation. See Brodheim v. Cry, 584 F.3d 1262, 1271 (9th Cir. 2009) ("To prevail on a retaliation claim, a plaintiff must show that his protected conduct was "the 'substantial' or 'motivating' factor behind the defendant's conduct."). Throughout his opposition to defendants' motion for summary, plaintiff contends that the defendants seized his personal typewriter and confidential legal documents seven days after prison officials issued a first level of review

decision on his inmate appeal against Officer Clays, eight days after Officer Clays was required to return his cellmate's personal typewriter and shaver to him, and thirty-one days after plaintiff had assisted another inmate in the filing of a lawsuit against defendants' fellow ISU officers. (Pl.'s Decl. at 3, Pl.'s Resp. to Defs.' SUDF at 13, 16-17, Pl.'s Statement of Facts at 3.) Plaintiff appears to contend that the timing of events shows that defendants Baker and Speer must have been retaliating against him.

To be sure, timing can constitute circumstantial evidence of retaliatory motive. See Bruce v. Ylst, 351 F.3d 1283, 1289 (9th Cir. 2003); Pratt v. Rowland, 65 F.3d 802, 808 (9th Cir. 1995). However, there must be some nexus between the protected conduct and alleged adverse action. See Quiroz, 2015 WL 1485024 at *14. A retaliation claim cannot rest on the logical fallacy of *post hoc, ergo propter hoc,* literally, "after this, therefore because of this." See Huskey v. City of San Jose, 204 F.3d 893, 899 (9th Cir. 2000). Here, as noted above, plaintiff has not presented any evidence to the court on summary judgment indicating that the defendants were aware of his engagement in protected conduct let alone evidence that the defendants were substantially motivated by his protected conduct when they searched his cell and confiscated his property. See Brodheim, 584 F.3d at 1271.

Finally, at his deposition, plaintiff testified that during the course of the cell search in question, defendant Baker said "Everybody has a boss", and that defendant Speer said "Let me search him for papers." (Pl.'s Dep. at 57:24 & 104:8-18.) Allegations that defendants made these vague statements, however, do not indicate that the defendants searched plaintiff's cell and confiscated his property because he had filed an inmate appeal against their fellow officer and had acted as a jailhouse lawyer in the past. See Wood, 753 F.3d at 905 (district court properly granted summary judgment against plaintiff because there was no indication that prison officials' "isolated fragments of statements" referred to his protected conduct). In this regard, plaintiff's contention that defendants' conduct was retaliatory is purely speculative. It is well established that speculation is not probative evidence indicating the crucial link between plaintiff's protected conduct and defendants' alleged adverse actions. Id. ("We have repeatedly held that mere speculation that defendants acted out of retaliation is not sufficient.") (and citing cases). See also

Quiroz, 2015 WL 1485024 at *4 ("However, mere speculation that defendants acted out of retaliation is not sufficient.").

Accordingly, for all of the foregoing reasons, the undersigned concludes that defendants' motion for summary judgment with respect to plaintiff's First Amendment retaliation claims should be granted.[1]

OTHER MATTERS

Also pending before the court is plaintiff's motion for summary judgment filed on August 3, 2015. Under this court's discovery and scheduling order, the parties were required to file any pretrial motions on or before December 29, 2014. Plaintiff has not filed a motion to modify the court's discovery and scheduling order showing good cause for the filing of his motion after the deadline for doing so order the court's scheduling order. See Johnson v. Mammoth Re-creations, 975 F.2d 604, 608 (9th Cir.1992). Accordingly, the court will deny plaintiff's motion for summary judgment as untimely.[2]

Plaintiff has also filed a motion to strike a "personal attack" by defendants and a motion to file a surreply in support of his motion for summary judgment. Defendants have opposed both motions. First, as to the motion to strike, plaintiff contends that defense counsel mischaracterized one of his contentions to suggest that he assisted another inmate in filing a lawsuit against

[1] In light of the recommendation set forth herein, the undersigned declines to address defendants' alternative argument that they are entitled to summary judgment in their favor based on the affirmative defense of qualified immunity.

[2] The undersigned notes that, in the interest of justice, the court has considered plaintiff's motion for summary judgment in conjunction with his opposition to defendants' motion for summary judgment. The court further notes that, even if the court had granted plaintiff leave to act out of time to file his motion for summary judgment, the evidence presented by plaintiff in support of that motion fails to establish beyond dispute that the defendants Baker and Speer retaliated against him in violation of his rights under the First Amendment. Because in this case plaintiff would bear the burden of proof at trial on his retaliation claim, in order to prevail on summary judgment he would need to affirmatively demonstrate that based upon the undisputed facts no reasonable trier of fact could find other than for him. See Soremekun v. Thrifty Payless, Inc., 509 F.3d 978, 984 (9th Cir. 2007). Here, as discussed above in connection with defendants' motion for summary judgment, plaintiff's evidence does not establish that defendants knew of plaintiff's engagement in protected conduct or that defendants' search of plaintiff's cell and seizure of property located therein was substantially motivated by plaintiff's engagement in protected conduct.

defendants Baker and Speer when in actuality it appears he assisted another inmate in filing a lawsuit against defendant Baker and Speer's fellow officers. Defendants contend in their opposition to the motion that their characterization was reasonable based on the way that plaintiff had written the contention at issue and that their characterization of the contention as false was not personal attack on plaintiff himself. After reviewing the record, the court finds that the parties have had a simple misunderstanding regarding an inconsequential fact, and there are no grounds for striking portions of the parties' briefing or for sanctions.

As to plaintiff's motion to file a surreply in support of his motion for summary judgment, as an initial matter, a surreply is not authorized by the Federal Rules of Civil Procedure or the Local Rules of Court. Moreover, as discussed above, plaintiff's motion for summary judgment will be denied as untimely, so any surreply would be unnecessary.

Finally, defendants have filed a series of evidentiary objections to plaintiff's evidence submitted in opposition to their motion for summary judgment. Insofar as defendants' objections are relevant to the court's disposition of the pending motion for summary judgment as set forth herein, they are overruled. The undersigned finds it would be an abuse of discretion to refuse to consider evidence offered by a pro se plaintiff at the summary judgment stage. See e.g., Jones v. Blanas, 393 F.3d 918, 935 (9th Cir. 2004) (reversing and remanding with instructions to consider evidence offered by the pro se plaintiff in his objections to the findings and recommendations). In any event, given the recommendation set forth above that defendants' motion for summary judgment be granted, defendants' evidentiary objections are unnecessary.

CONCLUSION

IT IS HEREBY ORDERED that:

1. Plaintiff's motion for summary judgment (Doc. No. 120) is denied as untimely;

2. Plaintiff's motion to strike (Doc. No. 130) is denied;

3. Plaintiff's motion for leave to file a surreply (Doc. No. 131) is denied; and

4. Defendants' evidentiary objections (Doc. No. 125) insofar as they are relevant to the court's disposition of the pending motion for summary judgment are overruled.

/////

IT IS HEREBY RECOMMENDED that:

1. Defendants' motion for summary judgment (Doc. No. 110) be granted; and

2. This action be closed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within seven days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any response to the objections shall be filed and served within seven days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: September 11, 2015

Dale A. Drozd

DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

DAD:9
john2881.57msj