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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

EZEQUIEL ROMO,  
Plaintiff,  
v.  
MATTHEW CATE, et al.  
Defendant.

No. 2:11-cv-2898 GEB DAD P

ORDER

Plaintiff is a state prisoner proceeding with an action for alleged civil rights violations pursuant to 42 U.S.C. § 1983. On August 29, 2014, the court issued findings and recommendations granting in part and denying in part defendants’ motion to dismiss. (See Doc. No. 53.) On September 11, 2014, defendants filed a request for clarification of the findings and recommendations. (Doc. No. 54.) Therein, defendants suggest that the court intended to dismiss defendants J. Baker, Williams, Holstrom and Walker completely from the action, but, they argue, the language of the court’s recommendation indicating that the Eighth Amendment conditions-of-confinement claim is viable as to all defendants is inconsistent with that intention. They seek clarification of that apparent inconsistency. They further request additional time in which to file formal objections to the findings and recommendations in the event the court states that defendant

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1 J. Baker, Williams, Holstrom and Walker should remain as defendants to the conditions-of-  
2 confinement claim.<sup>1</sup>

3 The defendants are correct that the undersigned intended to recommend that J. Baker,  
4 Williams, Holstrom and Walker should be dismissed completely from this action, pursuant to  
5 Federal Rule of Civil Procedure 12(b)(6). Defendants J. Baker, Williams and Holstrom are  
6 named in the complaint as officers involved in the inmate appeals process, which the court found  
7 could not be the basis for any viable civil rights claim in this case. (See Fifth Amended  
8 Complaint (Doc. 21) at 6, ¶¶ 20-22; Findings and Recommendations (Doc. No. 53) at 5-6.)  
9 Insofar as they are identified solely with plaintiff's administrative appeals process, it is not  
10 plausible that defendants J. Baker, Williams and Holstrom could be liable for any other claim  
11 alleged in the operative complaint. See Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57  
12 (2007) (holding that a claim upon which the court can grant relief must have facial plausibility);  
13 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) ("A claim has facial plausibility when the plaintiff  
14 pleads factual content that allows the court to draw the reasonable inference that the defendant is  
15 liable for the misconduct alleged.") Likewise, the court found defendant Walker, the warden at  
16 the prison where the events relevant to this action occurred, could not be liable on a theory of  
17 failure to train or supervise and, further, could not be liable on a theory of respondeat superior on  
18 any other claim. (Id. at 6-7.) Therefore defendant Walker should be dismissed as a defendant in  
19 this action.

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. The Findings and Recommendations of August 29, 2014 (Doc. No. 53) are amended  
22 as follows:

23 a. Paragraph 6 of the Recommendations, page 24, is amended to read, "The court  
24 should grant the motion to dismiss the Eighth Amendment claim for unconstitutional conditions  
25 of confinement as to defendants J. Baker, Williams, Holstrom and Walker. As to all other  
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27 <sup>1</sup> Defendants represent that they "do not intend to object to any . . . portion of the findings and  
28 recommendations" other than the status of defendants J. Baker, Williams, Holstrom and Walker  
in this case. (Request for Clarification (Doc. No. 54) at 3.)

1 defendants, the motion to dismiss the Eighth Amendment claim for unconstitutional conditions of  
2 confinement should be denied.”

3 b. The court adds Paragraph 7 to the Recommendations, which reads, “The court  
4 should grant the motion to dismiss as to all claims based on the processing or review of plaintiff’s  
5 underlying administrative inmate appeals.”

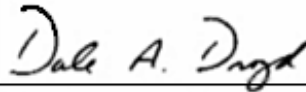
6 c. The court adds Paragraph 8 to the Recommendations, which reads,  
7 “Defendants J. Baker, Williams, Holstrom and Walker should be dismissed from this action.”

8 2. The Findings and Recommendations of August 29, 2014, remain otherwise  
9 unamended.

10 3. Defendants’ request for an extension of time (Doc. No. 54) in which to file objections  
11 to the Findings and Recommendations of August 29, 2014, is denied as having been rendered  
12 moot by this clarification.

13 4. Plaintiff has fourteen days from the date of this order in which to file objections, if  
14 any, to the amended recommendations listed in Paragraph 1 of this Order. Failure to file  
15 objections within the specified time may waive the right to appeal the District Court’s order.  
16 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 Dated: September 15, 2014

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20 DALE A. DROZD  
21 UNITED STATES MAGISTRATE JUDGE

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