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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

REX CHAPPELL,

 Plaintiff,

 v.

OFFICER FLEMING, et al.,

 Defendants.

No. 2:12-cv-0234 MCE AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. 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 February 26, 2014, 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 twenty-one days. Both plaintiff and defendants have filed objections to the findings and recommendations. ECF Nos. 71, 72.

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 entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

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1 Accordingly, IT IS HEREBY ORDERED that:

2 1. The findings and recommendations filed February 26, 2014, are adopted in full; and

3 2. Defendant Murphy's motion to dismiss (ECF No. 51) is granted for failing to state an
4 Eighth Amendment or a retaliation/conspiracy claim upon which relief can be granted;

5 3. Defendant Murphy's motion to dismiss for failing to exhaust administrative remedies
6 (ECF No. 54) is denied as moot;

7 4. The remaining defendants' motion to dismiss (ECF No. 42) is granted in part and the
8 following claims are dismissed:

9 a. Plaintiff's First Amendment retaliation claim against Defendant Fleming based
10 on the allegation that Fleming validated plaintiff as a gang member because of plaintiff's use of
11 derogatory language;

12 b. Plaintiff's Eighth Amendment claim as to Defendants Fleming, Brackett, W.
13 Harrison, Audette, Perez and St. Andre;

14 c. Plaintiff's procedural due process claim against Defendants Cates, McDonald
15 Perez, J. Harrison, and Marquez;

16 d. Plaintiff's substantive due process claim against Defendants Cates, McDonald,
17 and Perez;

18 e. Plaintiff's First Amendment retaliation claim against Defendants Cates and
19 McDonald; and

20 f. Plaintiff's conspiracy claims as to all remaining defendants;

21 5. The defendants' motion to dismiss (ECF No. 42) is denied in part as to the following
22 claims only:

23 a. Plaintiff's First Amendment retaliation claim against Defendants Fleming,
24 Brackett, W. Harrison, Amero, and Perez;

25 b. Plaintiff's substantive due process claim against Defendants J. Harrison and
26 Marquez; and


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6. Defendants Fleming, Brackett, W. Harrison, Amero, Perez, J. Harrison, and Marquez are ordered to file an answer to the claims identified in the previous paragraph within thirty days of this order.

Dated: March 25, 2014


MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT