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

JOHN PHILIP MONCRIEF,

Plaintiff,

No. 2:12-cv-00414-MCE AC

vs.

CALIFORNIA DEPARTMENT OF
CORRECTIONS and
REHABILITATION, et al.

Defendants.

ORDER

_____ /

Plaintiff, a state prisoner proceeding with counsel, 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 November 19, 2012, the Magistrate Judge filed findings and recommendations herein (ECF No. 15) 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. Defendants have filed objections to the findings and recommendations.

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule
2 304, this Court has conducted a de novo review of this case. Having carefully reviewed the
3 entire file, the Court finds the findings and recommendations to be supported by the record and
4 by proper analysis.¹

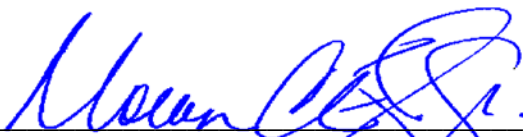
5 Accordingly, IT IS HEREBY ORDERED that:

6 1. The findings and recommendations filed November 19, 2012 (ECF No. 15) are
7 ADOPTED IN FULL;

8 2. Defendants' motion to dismiss, filed September 25, 2012 (ECF No. 11) is
9 GRANTED as to Counts Three, Four, Five and Six of the First Amended Complaint, and
10 DENIED as to all remaining counts; and

11 3. Not later than twenty (20) days following the date this Order is electronically
12 filed, Plaintiff may (but is not required to) file an amended complaint. If no amended complaint
13 is filed within said twenty (20) day period, without further notice to the parties, the causes of
14 action dismissed by virtue of this Order will be dismissed with prejudice.

15 DATED: February 14, 2013

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19 MORRISON C. ENGLAND, JR., CHIEF JUDGE
20 UNITED STATES DISTRICT JUDGE

21 ¹ Moreover, the Court notes that although Defendants moved to dismiss Plaintiff's First
22 Amended Complaint (see ECF No. 11 at 1), which had been filed on September 4, 2012,
23 Defendants in the objections refer to the original complaint as the operative complaint in this
24 action. See, e.g., ECF No. 17 at 2 n.1 ("The complaint squarely states that Grounds and
25 Swarthout are being sued in both their individual and official capacities."); id. at 2 n.3 ("The
26 copy of the complaint served on Defendants does not contain a seventh cause of action."); id. at
5, 7 (referring to original complaint at "ECF No. 1"); id. at 11 ("The Magistrate Judge made no
finding concerning what is the eleventh cause of action in the complaint served on Defendants.")
Because Defendants base their objections to the Magistrate Judge's findings and
recommendations on the deficiencies of the original complaint, as opposed to the operative First
Amended Complaint, their objections lack merit.