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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN PHILIP MONCRIEF,  
Plaintiff,

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION, et al.,  
Defendants.

No. 2:12-cv-0414 MCE AC P

ORDER

Plaintiff, a state prisoner proceeding through 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 March 25, 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 fourteen days. Plaintiff has filed objections to the findings and recommendations.


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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Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed March 25, 2014, are adopted in full;
2. The motion to dismiss (ECF No. 35) is granted without further leave to amend as to the following claims and defendants:
  - a. The ADA and RA claims against the CDCR (Counts 1 and 2);
  - b. The due process claim alleged in Count 3;
  - c. The Eighth Amendment claims against Defendant Grounds based on his personal participation; and
  - d. Claim 6 against the CDCR for violation of Cal. Civ. Code § 54 et seq.;
3. The motion to dismiss is granted without prejudice as to Defendant Swarthout;
4. The motion to dismiss is denied as to:
  - a. The Eighth Amendment claims (Counts 4 and 5) against Defendant Grounds for his failure to train; and,
  - b. The state law claims alleged in Counts 7-9; and
5. The Second Amended Complaint shall proceed solely on Counts 4 and 5 (the Eighth Amendment claims) and Counts 7-9 (the negligence and emotional distress claims) against Defendants Grounds and Does 1-50 pending further discovery and plaintiff's anticipated motion to amend the complaint to identify the Doe Defendants.

Dated: April 17, 2014

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