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

DANIEL THOMAS HARVEY,

Plaintiff,

No. 2:10-cv-1653-KJM-EFB PS

vs.

CITY OF SOUTH LAKE TAHOE;
et al.,

Defendants.

DANIEL THOMAS HARVEY,

Plaintiff,

No. 2:12-cv-526-KJM EFB PS

vs.

CITY OF SOUTH LAKE TAHOE;
et al.,

Defendants.

ORDER

On February 21, 2013, the magistrate judge filed findings and recommendations in the above-captioned cases, which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within fourteen days.

1 Plaintiff filed objections on March 6, 2013¹, and defendants filed responses thereto on March 13,
2 2013. Also, on March 22, 2013, plaintiff filed a motion for recusal of the assigned magistrate
3 judge. The undersigned has considered all of these filings.

4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(c) and Local Rule
5 304, this court has conducted a *de novo* review of this case. Having carefully reviewed the file,
6 the court finds the findings and recommendations to be supported by the record and by the
7 proper analysis. The court also finds that plaintiff has not demonstrated that recusal of the
8 assigned magistrate judge is warranted.

9 Accordingly, with regard to plaintiff's first action, 2:10-cv-1653-KJM-EFB, IT IS
10 HEREBY ORDERED that:

- 11 1. The Findings and Recommendations filed February 21, 2013, are ADOPTED.
- 12 2. Defendants' motion to dismiss, Dckt. No. 63, is granted, with leave to amend
13 as provided in the magistrate judge's findings and recommendations. Specifically, plaintiff is
14 permitted to amend his § 1983 *Monell* claim against the City and his § 1983 claim against
15 defendants Eissinger and Duke. He is further permitted to include in any fourth amended
16 complaint his § 1983 claims against defendants Herminghaus and Laney and/or a § 1983 *Monell*
17 claim against El Dorado County based *only* on the County's alleged failure to provide him water
18 and the alleged resulting shoulder injury while in the jail after the Brick Incident.
- 19 3. Plaintiff is provided forty-five days from the date of this order to file a fourth
20 amended complaint as narrowed above. If plaintiff does not file a fourth amended complaint
21 within the time prescribed, the assigned magistrate judge may recommend that this action be
22 dismissed for failure to prosecute.

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25 ¹ Although plaintiff's objections were only filed in Case No. 2:10-cv-1653-KJM-EFB PS,
26 the court has reviewed them as they apply to the magistrate judge's recommendations in both of the
above-captioned cases.


1 4. Plaintiff's motion for recusal of the assigned magistrate judge, Dckt. No. 77, is
2 denied.

3 With regard to plaintiff's second action, 2:12-cv-526-KJM-EFB, IT IS
4 FURTHER ORDERED that:

5 1. Each of the three motions to dismiss, Dckt. Nos. 4, 8, and 19, are granted
6 without leave to amend.²

7 2. The Clerk is directed to close case no. 2:12-cv-526-KJM-EFB PS.

8 DATED: March 30, 2013.

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12 UNITED STATES DISTRICT JUDGE
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26 ² As noted in the magistrate judge's findings and recommendations, some of the claims in plaintiff's second action may be asserted in any fourth amended complaint filed in the first action.