

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES LEWIS DIXIE,
Plaintiff,
v.
TIM VIRGA, et al.,
Defendant.

No. 2:12-cv-2626 LKK DAD

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 January 16, 2014, the magistrate judge filed findings and recommendations herein which were served on plaintiff and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. (ECF No. 39.) Neither party 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.


///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed January 16, 2014 (ECF No. 39) are ADOPTED in full;
2. Defendants' May 9, 2013 motion to dismiss (ECF No. 28) is GRANTED in part and DENIED in part:
 - a. All of plaintiff's claims against defendant Warden Virga are DISMISSED with leave to amend within 30 days of this order;
 - b. Plaintiff's claims under the Equal Protection Clause of the Fourteenth Amendment are DISMISSED with leave to amend within 30 days of this order;
 - c. Plaintiff's claim for monetary damages against defendants under the Religious Land Use and Institutionalized Persons Act is DISMISSED without leave to amend;
 - d. Plaintiff's claims for an award of monetary damages against defendants in their official capacities are DISMISSED without leave to amend;
 - e. Plaintiff's claims based on the California Penal Code, Title 15 of the California Code of Regulations, and the Department Operations Manual are DISMISSED without leave to amend; and
 - f. Defendants' motion to dismiss is DENIED with respect to plaintiff's remaining claims under the Free Exercise Clauses of the United States and California Constitutions and the Religious Land Use and Institutionalized Persons Act.

DATED: February 19, 2014.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT