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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILBER ATCHERLEY,
Plaintiff,
v.
J. HANNA, et al.,
Defendants.

No. 2:13-cv-0576 KJM 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 as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 26, 2014, the magistrate judge filed findings and recommendations, 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. Neither party has filed objections to the findings and recommendations.

The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s conclusions of law are reviewed de novo. *See Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis.

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Accordingly, IT IS HEREBY ORDERED that:

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

2. Plaintiff's motion for leave to file a first amended complaint (ECF No. 28) is denied as unnecessary;

3. Plaintiff's motion for service of the first amended complaint (ECF No. 30) is denied as moot;

4. Defendants' motion to dismiss (ECF No. 31) the first amended complaint is granted in part and denied in part as follows:

a. The motion to dismiss plaintiff's ADA and RA claims against Defendants Hanna, Gricewich and Owens in their individual capacities is granted without leave to amend;

b. The motion to dismiss plaintiff's retaliation claim against Defendants Hanna and Owens is granted without prejudice;

c. The motion to dismiss plaintiff's requests for monetary damages against defendants in their official capacities is granted without leave to amend;

d. The motion to dismiss the ADA and RA claims is denied;

5. Plaintiff's motion for leave to file a second amended complaint (ECF No. 39) is granted;

6. Plaintiff's motion to compel the CDCR to provide service addresses (ECF No. 36) is denied as moot;

7. Plaintiff's motion for judicial notice (ECF No. 37) is denied; and

8. Plaintiff's request for service of the second amended complaint (ECF No. 40) is referred back to the magistrate judge.

DATED: September 29, 2014.


UNITED STATES DISTRICT JUDGE