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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SAAHDI ABDUL COLEMAN,  
Plaintiff,  
v.  
FRED FOULK, et al.,  
Defendants.

No. 2:13-cv-1753 KJM CKD 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 October 25, 2017, 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 fourteen days. Plaintiff has filed objections to the findings and recommendations, objecting to the recommended dismissal of defendants Hale and Nelson.

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 reviewed the file, for the reasons explained below the court declines to adopt the recommendation to dismiss defendants Hale and

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1 Nelson. Plaintiff has not objected to the recommended dismissal of defendants Swartz and  
2 Harrod; that recommendation will be adopted.

3 In an order filed June 2, 2015, this court declined to adopt a prior recommendation  
4 to dismiss defendants Hale and Nelson following screening of plaintiff's first amended complaint.  
5 See ECF No. 25 at 3. Specifically, the court found well-taken plaintiff's objection that the  
6 magistrate judge had "misconstrued the nature of his claims against these two defendants." *Id.*

7 Plaintiff has adequately alleged that defendants Hale and Nelson  
8 obstructed his efforts to obtain relief from the alleged ongoing  
9 interference with his right to access the courts by improperly  
10 screening out his grievances, refusing to file the grievances, and  
11 delivering them to staff who would then allegedly retaliate against  
12 plaintiff based on the unfiled grievances. Plaintiff has adequately  
13 stated a claim for relief against defendants Hale and Nelson.

14 *Id.* This matter is now before the court on plaintiff's third amended complaint. See ECF No. 53.  
15 The third amended complaint contains several allegations against defendants Hale and Nelson  
16 that continue to support the claim against them found by the court in its June 2, 2015 order. See  
17 ECF No. 53 at, e.g., 3-6, 13, 15. The court finds the third amended complaint states a cognizable  
18 claim for relief against defendants Hale and Nelson and declines to adopt the recommendation  
19 that they be dismissed. The court makes no findings now on the applicability of any ratification  
20 theory of liability to the claim against defendants Hale and Nelson contained in the third amended  
21 complaint. *Cf.* ECF No. 59 at 1 (in objections, pointing out ratification theory plaintiff says  
22 complaint embodies).

23 In accordance with the above, IT IS HEREBY ORDERED that:

24 1. The findings and recommendations filed October 25, 2017, are adopted in part  
25 and rejected in part;

26 2. Defendants Swartz and Harrod are dismissed;

27 3. Plaintiff's third amended complaint states a cognizable claim for relief against  
28 defendants Hale and Nelson as reflected in this order; and

4. This matter is referred back to the assigned magistrate judge for further  
proceedings consistent with this order.

DATED: August 1, 2018.