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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL WITKIN,
Plaintiff,
v.
G. SWARTHOUT, et al.,
Defendants.

No. 2:13-cv-1931 GEB KJN 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 pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 4, 2015, 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 February 4, 2015, are adopted in full;
2. Defendants' motion to dismiss (ECF No. 18) is granted in part, and denied in part, as

set forth below:

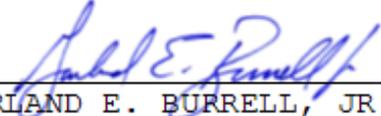
a. Plaintiff's First Amendment retaliation claims against defendants Swarthout and Popovits in connection with plaintiff's outdoor exercise claim, as well as his Eighth Amendment claims against defendants Young and Popovits, is dismissed with prejudice.

b. The following claims are dismissed without prejudice to plaintiff renewing such claims in a second amended complaint:

1. Plaintiff's retaliation claim against defendant Sanchez in connection with the rules violation imposed on March 8, 2013;
2. Plaintiff's retaliation claim against defendant Popovits based on the April 17, 2013 bunk area search;
3. Plaintiff's retaliation claim against defendant Wilkinson based on the March 21, 2013 search; and
4. Plaintiff's Eighth Amendment claim as to defendant Swarthout.

c. Plaintiff is granted leave to file a second amended complaint within thirty days of the date of this order.

Dated: March 5, 2015



GARIAND E. BURRELL, JR.
Senior United States District Judge