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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEAN C. RODRIGUEZ,
Plaintiff,
v.
JEFFREY BEARD, et al.,
Defendants.

No. 2: 14-cv-1049 MCE KJN P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. On March 22, 2017, the court granted defendants’ summary judgment motion and judgment was entered. (ECF Nos. 133, 134.) Plaintiff appealed the judgment to the Ninth Circuit Court of Appeals. (ECF No. 137.)

On April 25, 2019, the Ninth Circuit Court of Appeals reversed and remanded this action on the grounds that the undersigned dismissed certain claims without consent from all parties. Williams v. King, 875 F.3d 500, 503-04 (9th Cir. 2017). (ECF No. 140.) Accordingly, the undersigned herein recommends dismissal of those claims previously dismissed by the undersigned without consent of all parties.

On September 5, 2014, the undersigned dismissed the second amended complaint but for the claims alleging that defendants Foulk and St. Andre subjected plaintiff to a race-based lockdown on March 17, 2013, and the retaliation claim against defendant Matis. (ECF No. 18.)

1 For the reasons stated in the September 5, 2014 order, the undersigned herein recommends
2 dismissal of the second amended complaint but for the claims alleging that defendants Foulk and
3 St. Andre subjected plaintiff to a race-based lockdown on March 17, 2013, and the retaliation
4 claim against defendant Matis.

5 On January 5, 2015, the undersigned denied plaintiff's motion to amend. (ECF No. 30.)
6 In an abundance of caution, the undersigned herein recommends that plaintiff's motion to amend
7 (ECF No. 26) be denied for the reasons stated in the January 5, 2015 order.


8 Accordingly, IT IS HEREBY RECOMMENDED that:

9 1. The second amended complaint be dismissed but for the claims alleging that
10 defendants Foulk and St. Andre subjected plaintiff to a race-based lockdown on March 17, 2013,
11 and the retaliation claim against defendant Matis;

12 2. Plaintiff's motion to amend (ECF No. 26) be denied.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
15 after being served with these findings and recommendations, any party may file written
16 objections with the court and serve a copy on all parties. Such a document should be captioned
17 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
18 objections shall be filed and served within fourteen days after service of the objections. The
19 parties are advised that failure to file objections within the specified time may waive the right to
20 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 Dated: May 17, 2019

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24 KENDALL J. NEWMAN
25 UNITED STATES MAGISTRATE JUDGE

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