

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

THEON OWENS,
Plaintiff,
v.
ELENA RAPOPORT, et al.,
Defendants.

No. 2:16-cv-00273 TLN CKD P

ORDER &
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. On August 15, 2016, the undersigned issued a screening order detailing the alleged events that are the subject of this action and concluding that plaintiff stated federal claims against defendants Rapoport and Virga. (ECF No. 13.) However, plaintiff was granted leave to amend in order to cure certain deficiencies in the complaint. (Id.)

Before the court for screening is plaintiff’s second amended complaint (“SAC”). (ECF No. 18.) The SAC states cognizable claims under 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). Specifically, plaintiff states a cognizable claim under the Fourth Amendment Due Process Clause against Rapoport for causing plaintiff to be subject to involuntary medication between September 24, 2012 and November 28, 2012, absent the conditions necessary for such treatment. (See ECF No. 13 at 4-5.) Plaintiff also states a claim against Virga for a retaliatory prison transfer in violation of the First Amendment. (See ECF No. 13 at 5.)

1 As to defendant Swartz, who reviewed plaintiff's administrative grievance on the
2 medication issue, plaintiff asserts this defendant falsified records in order to cover for Rapoport.
3 (SAC, ¶¶ 75-78.) While the court must assume that plaintiff's factual allegations are true, it is not
4 required to accept as true allegations that contradict exhibits attached to the complaint or
5 allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable
6 inferences. Daniels-Hall v. National Educ. Ass'n, 629 F.3d 992, 998 (9th Cir. 2010). As
7 plaintiff's conclusory allegations that Swartz falsified records do not state a federal claim, the
8 undersigned will recommend that this defendant be dismissed with prejudice.

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

10 1. Service is appropriate for the following defendants: Rapoport and Virga.
11 2. The Clerk of the Court shall send plaintiff two USM-285 forms, one summons, an
12 instruction sheet and a copy of the amended complaint filed November 10, 2016.

13 3. Within thirty days from the date of this order, plaintiff shall complete the attached
14 Notice of Submission of Documents and submit the following documents to the court:

- 15 a. The completed Notice of Submission of Documents;
16 b. One completed summons;
17 c. One completed USM-285 form for each defendant listed in number 1 above;

18 and

- 19 d. Three copies of the endorsed amended complaint filed November 10, 2016.

20 4. Plaintiff need not attempt service on defendants and need not request waiver of service.
21 Upon receipt of the above-described documents, the court will direct the United States Marshal to
22 serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4 without payment
23 of costs.

24 IT IS HEREBY RECOMMENDED that defendant Swartz be dismissed from this action
25 with prejudice.

26 These findings and recommendations are submitted to the United States District Judge
27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
28 after being served with these findings and recommendations, plaintiff may file written objections

1 with the court. Such a document should be captioned “Objections to Magistrate Judge's Findings
2 and Recommendations.” Plaintiff is advised that failure to file objections within the specified
3 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153
4 (9th Cir. 1991).

5 Dated: January 26, 2017



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

6
7
8
9 2 / owen0273.1amd.new
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

THEON OWENS,
Plaintiff,
v.
ELENA RAPOPORT, et al.,
Defendants.

No. 2:16-cv-0273 TLN CKD P

NOTICE OF SUBMISSION OF
DOCUMENTS

Plaintiff hereby submits the following documents in compliance with the court's order
filed _____ :
_____ completed summons form
_____ completed USM-285 forms
_____ copies of the _____

Complaint

DATED:

Plaintiff