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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES D. VILLACRES,
Plaintiff,
v.
CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,
Defendants.

No. 2:16-cv-0305 JAM AC P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. By order and findings and recommendations filed February 8, 2017, the undersigned screened the complaint and dismissed plaintiff’s deliberate indifference claim (Claim Four) with leave to amend, while recommending his other claims be dismissed without leave to amend. ECF No. 15. The District Judge assigned to this action adopted the findings and recommendations in full; the claims against defendants Schafer, Touche, Voong, Labahn, Garner, Anderson, and Fasnatch were dismissed without leave to amend and plaintiff was given thirty days to file an amended complaint with respect to Count Four. ECF No. 18. Plaintiff filed untimely objections to the findings and recommendations which were construed as a motion for reconsideration of the District Judge’s order, and as such the motion was denied. ECF Nos. 19, 20. Plaintiff was given an additional thirty days to file an amended complaint. ECF No. 21.

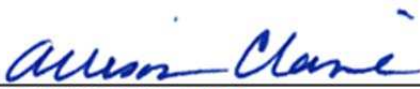
1 Plaintiff has once again filed objections, this time making clear that he does not intend to amend
2 the complaint and is instead standing by his original complaint. ECF No. 23.

3 Plaintiff's decision to stand by his original complaint and not amend is well within his
4 rights. Edwards v. Marin Park, Inc., 356 F.3d 1058, 1064-65 (9th Cir. 2004). When a plaintiff
5 notifies the court in writing that he does not intend to file an amended complaint and is instead
6 standing by his original complaint, the district court is to "take[] the election not to amend at face
7 value, enter[] a final judgment dismissing all claims with prejudice, and allow[] the case to come
8 to [the Ninth Circuit] on appeal in that posture." Id. at 1064.

9 Accordingly, IT IS HEREBY RECOMMENDED that all claims in the complaint be
10 dismissed with prejudice.

11 These findings and recommendations are submitted to the United States District Judge
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
13 after being served with these findings and recommendations, plaintiff may file written objections
14 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings
15 and Recommendations." Plaintiff is advised that failure to file objections within the specified
16 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
17 (9th Cir. 1991).

18 DATED: June 27, 2017

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20 ALLISON CLAIRE
21 UNITED STATES MAGISTRATE JUDGE
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