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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CARL ECKSTROM,
Plaintiff,
v.
MARTIN HOSHINO,
Defendant.

No. 2:16-cv-00538-TLN-EFB

ORDER

Plaintiff Carl Eckstrom (“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 August 27, 2018, the magistrate judge filed findings and recommendations which were served on Plaintiff and which contained notice to Plaintiff that any objections to the findings and recommendations were to be filed within fourteen days. (ECF No. 26.) On September 13, 2018, Plaintiff filed objections to the findings and recommendations. (ECF No. 29.) Plaintiff has since filed a Motion for Leave to File a Third Amended Complaint (ECF No. 31), a Third Amended Complaint (ECF No. 32), and a Motion for Ruling on Objections to Findings and Recommendations (ECF No. 33).

This Court reviews de novo those portions of the proposed findings of fact to which objection has been made. 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore

1 Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982). As
2 to any portion of the proposed findings of fact to which no objection has been made, the Court
3 assumes its correctness and decides the motions on the applicable law. See Orand v. United
4 States, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s conclusions of law are
5 reviewed de novo. See Britt v. Simi Valley Unified Sch. Dist., 708 F.2d 452, 454 (9th Cir. 1983).

6 Having carefully reviewed the entire file under the applicable legal standards, the Court
7 finds the Findings and Recommendations to be supported by the record and by the magistrate
8 judge’s analysis.

9 The issues with the Second Amended Complaint (ECF No. 23) identified by the screening
10 order (ECF No. 26 at 3–4) are not ameliorated by Plaintiff’s objections or his proposed Third
11 Amended Complaint.¹ Notably, Plaintiff has still failed to allege how any of the named
12 Defendants were aware of any specific and current threat to his safety posed by the Mexican
13 Mafia gang. Plaintiff refers to various exhibits and asserts vague and generalized allegations,
14 such as, “there was a grooming of the record to support [prison staff’s desired conclusion]” (ECF
15 No. 29 at 12), but these contentions remain unsupported by any non-conclusory factual
16 allegations. It is clear to the Court that Plaintiff disagrees with the prison staff’s assessment as to
17 the danger posed to his person by the Mexican Mafia. However, such disagreement is not in and
18 of itself indicative of deliberate indifference which, instead, requires a defendant’s subjective
19 awareness of a risk. See Farmer v. Brennan, 511 U.S. 825, 837 (1994) (“[T]he official must both
20 be aware of facts from which the inference could be drawn that a substantial risk of serious harm
21 exists, and he must also draw the inference.”). Plaintiff has failed to sufficiently allege facts
22 showing that each of the named Defendants had such awareness. Further, he has had multiple
23 opportunities to state a viable claim and has repeatedly failed to do so.

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26 ¹ The Court has reviewed the proffered Third Amended Complaint. Because it does not fix the
27 infirmities noted in the Findings and Recommendations, the Court declines to allow the
28 amendment. Carrico v. City of S.F., 656 F.3d 1002, 1008 (9th Cir. 2011) (leave to amend may be
denied if the proposed amendment is futile because it would be subject to dismissal).

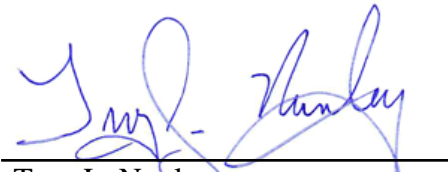
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Accordingly, IT IS HEREBY ORDERED that:

1. The Findings and Recommendations filed August 27, 2018 (ECF No. 26), are adopted in full;
 2. Plaintiff's Second Amended Complaint (ECF No. 23) is DISMISSED, without leave to amend, for failure to state a cognizable claim;
 3. Plaintiff's Motion for Leave to File a Third Amended Complaint (ECF No. 31) is DENIED;
 4. Plaintiff's Motion for Ruling (ECF No. 33) is DENIED as moot; and
3. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: January 23, 2020



Troy L. Nunley
United States District Judge