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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GRADY HARRIS,
Plaintiff,
v.
JEFF MACOMBER, et al.,
Defendants.

No. 2:16-cv-0830 TLN DB P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to this court pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Before this court is a motion to dismiss filed by defendant D. Leavitt.¹ and plaintiff's second amended complaint ("SAC"). (ECF No. 90). For the reasons stated below the undersigned shall recommend that defendant's motion to dismiss be denied as moot.

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¹ The court notes there are multiple defendants in this case. Defendant Leavitt is represented by private counsel. The remaining defendants are represented by the Office of the Attorney General. Their pending motion for summary judgment (see ECF No. 81) shall be addressed separately.

1 On June 8, 2020, the District Court judge assigned to this action adopted in part and
2 rejected in part the undersigned's recommendation that an earlier motion to dismiss filed by
3 defendant Leavitt be denied. (See ECF Nos. 34, 62, 86). At that time, the court provided plaintiff
4 with the opportunity to file a SAC solely for the purpose of clarifying his First and Eighth
5 Amendment claims, and any part defendant Leavitt played in depriving plaintiff of those rights.
6 (See ECF No. 86 at 13). Plaintiff was given thirty days to do so. (See id.).

7 On July 17, 2020, defendant Leavitt filed the instant motion to dismiss. In it, he argues
8 that the motion should be granted because at that time, plaintiff had yet to file the SAC within the
9 court's requisite time period. (See ECF No. 90 at 2).

10 Thereafter, on September 14, 2020, plaintiff filed the SAC. (See ECF No. 96). The SAC
11 amends plaintiff's First and Eighth Amendment claims as instructed. (See generally id.). For
12 these reasons, it will be recommended that defendant Leavitt's motion to dismiss be denied as
13 moot.

14 Accordingly, IT IS HEREBY RECOMMENDED that defendant Leavitt's motion to
15 dismiss (ECF No. 90) be DENIED as moot.

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

24 Dated: March 23, 2021

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28 DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

DLB:13
DB/ORDERS/ORDERS.PRISONER.CIVIL RIGHTS/harr0830.mtd