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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID WESLEY BIRRELL, et al.,
Plaintiffs,
v.
ROBERT W. FOX, et al.,
Defendants.

No. 2:16-cv-1818 KJM CKD P

ORDER

Plaintiffs, state prisoners proceeding pro se and individually, have filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 4, 2022, the magistrate judge filed findings and recommendations, recommending that plaintiffs Deegan, Moore, Alvarez, Lownes and Alford be dismissed.¹ ECF No. 61. The findings and recommendations were served on all parties and contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Only plaintiff Deegan filed objections to the findings and recommendations.

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¹ The magistrate also recommended that plaintiff Toussaint be dismissed. After the filing of that recommendation, Toussaint voluntarily dismissed this action as it pertains to him. ECF No. 66.

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
2 court has conducted a *de novo* review of this case. Having reviewed the file, the court finds both
3 sets of findings and recommendations to be supported by the record and by the proper analysis.
4 Plaintiff Deegan has, however, made a showing sufficient to excuse his failure to timely file a
5 status report. Accordingly, defendant Deegan will not be dismissed.

6 IT IS HEREBY ORDERED that the court adopts in part and declines to adopt in part the
7 findings and recommendations filed August 4, 2022 (ECF No. 61), as follows:

- 8 a. Plaintiffs Moore, Alvarez, Lownes and Alford are dismissed; and
9 b. The court declines to dismiss plaintiff Deegan. This matter, as it pertains to him, is
10 referred back to the magistrate judge.

11 DATED: January 17, 2023.

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15 CHIEF UNITED STATES DISTRICT JUDGE
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