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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GERALD SPENCE,  
Plaintiff,  
v.  
G. KAUR, et al.,  
Defendants.

No. 2:16-cv-1828 TLN KJN P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding pro se. This action proceeds on plaintiff’s second amended complaint in which he claims that while he was housed at California State Prison-Solano, defendant Kaur, Sr. Librarian, retaliated against plaintiff for filing a form 22 against her, by issuing a 128-B and then a CDC-115 (“RVR”) on the same allegedly false charges. Plaintiff’s motion for leave to file a third amended complaint is now before the court. As discussed below, it is recommended that plaintiff’s motion to amend be partially granted.

I. Background

Plaintiff’s original complaint was filed on July 22, 2016. On April 27, 2017, plaintiff filed an amended complaint as of right. (ECF No. 19.) On June 20, 2017, plaintiff’s amended complaint was dismissed with leave to amend. (ECF No. 20.) On August 7, 2017, plaintiff filed a second amended complaint. (ECF No. 23.) On January 19, 2018, the court found plaintiff

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1 stated a potentially cognizable claim against defendant Kaur.<sup>1</sup> (ECF No. 25 at 1.) Defendant  
2 Kaur filed an answer on September 19, 2018. (ECF No. 44.) On October 11, 2018, the court  
3 issued a discovery and scheduling order. On November 20, 2018, pursuant to plaintiff's request,  
4 the undersigned extended the discovery deadline to February 25, 2019, and the pretrial motions  
5 deadline was extended to May 20, 2019. (ECF No. 51.) On January 23, 2019, the undersigned  
6 granted plaintiff's second request to extend the discovery deadline, which was extended to April  
7 19, 2019, and the pretrial motions deadline was extended to July 19, 2019. (ECF No. 58.)

8 On March 7, 2019, plaintiff filed a motion to amend, accompanied by his proposed third  
9 amended complaint. (ECF Nos. 60, 61.) Defendant Kaur opposes the motion; plaintiff filed a  
10 reply. (ECF Nos. 62, 63.)

11 On June 21, 2019, the court confirmed that discovery was closed, and the dispositive  
12 motions deadline was vacated. (ECF No. 82.)

## 13 II. Proposed Amendment

14 In the proposed third amended complaint, plaintiff adds due process claims against  
15 defendant Kaur, and adds substantive and procedural due process claims, retaliation claims, and  
16 "gender bias" or discrimination claims against newly-named Correctional Sgt. Muhammad, and  
17 Correctional Sgt. Chambers based on their assistance to defendant Kaur in filing a CDCR 128B  
18 Informational Chrono and RVR against plaintiff. (ECF No. 61.) Plaintiff seeks, *inter alia*,  
19 complete removal of the 128B Chrono and RVR, as well as monetary damages.

## 20 III Motion to Amend

### 21 A. The Parties' Briefing

22 In his motion, plaintiff notes that his first amended complaint alleged that his due process  
23 rights were violated by defendant Chambers in connection with the hearing on the alleged  
24 retaliatory disciplinary issued by defendant Kaur,<sup>2</sup> and argues as follows. Recently discovered

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25 <sup>1</sup> On February 14, 2018, defendants Ditto and Williams were dismissed without leave to amend.  
26 (ECF No. 27.)

27 <sup>2</sup> Plaintiff references the court's prior ruling: "In his second claim, plaintiff claims that  
28 'Chambers "heard" the [alleged] retaliatory disciplinary.' (ECF No. 19 at 5.) Plaintiff concedes  
that the RVR was overturned after plaintiff served the penalty assessed, 30-day deprivation of

1 documents “show the direct involvement of both Sgt. Chambers and Aisha Muhammed in  
2 drafting, advising, approving and hearing the RVR and composition of the 128B, the basis of the  
3 RVR.” (ECF No. 61 at 1.) Plaintiff was unable to earlier move to amend because such  
4 documents “were disclosed only 30 day[s] prior after [sic] the close of discovery.” ECF No. 61 at  
5 2.) Service of process on such new defendants can be expedited because “defendants can waive  
6 service,” and any additional discovery will be “minimal.” (Id.) His proposed amendment is for  
7 good cause, made in good faith as a result of his diligence, and delay alone is an insufficient  
8 ground to deny amendment. Further, such new documentary evidence demonstrates “futility is  
9 moot.” (Id.) Finally, plaintiff should be permitted to amend because his new claims are “facially  
10 plausible,” allowing reasonable inferences that the defendants are liable for their alleged  
11 misconduct. (ECF No. 61 at 2.)

12 Defendant Kaur contends that the motion should be denied for the following reasons.  
13 Plaintiff’s effort to bring a due process challenge is futile because such claim was dismissed when  
14 the court screened plaintiff’s first amended complaint, specifically finding that plaintiff must  
15 pursue unrelated due process claims in a separate action. (ECF No. 62 at 1.) Further, adding new  
16 defendants only 22 days before discovery is to close would prejudice defendant Kaur by unduly  
17 delaying this case. In addition to the delay in adding new defendants, discovery would need to be  
18 extended in order to litigate new theories of liability: due process and gender discrimination, as  
19 well as retaliation claims against the two new defendants. Finally, amendment is futile for two  
20 reasons: (1) because the court previously dismissed plaintiff’s due process claim against  
21 Chambers; and because plaintiff’s due process and gender discrimination claims against  
22 Chambers and Muhammad concern the adjudication of the RVR, such claims are unrelated to  
23 plaintiff’s retaliation claim against Kaur, and are barred under Rule 18(a) of the Federal Rules of  
24 Civil Procedure; and (2) because plaintiff’s proposed third amended complaint fails to state a  
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yard and law library access. (¶) Plaintiff fails to identify the factual basis upon which he raises  
26 this claim. In other words, he fails to identify any constitutional or federal statutory violation by  
27 Chambers’ actions. . . . (¶) Plaintiff’s allegations contained in Claim II . . . fail to state viable  
28 retaliation claims because plaintiff fails to identify any facts connecting such defendants to  
plaintiff’s protected conduct or showing that their actions were based on retaliation.” (ECF No.  
20 at 3-4.)

1 claim against Chambers and Muhammad -- plaintiff failed to allege facts showing either  
2 Chambers or Muhammad violated plaintiff's due process rights during the adjudication of the  
3 RVR, and there are no facts demonstrating either of them took any adverse action against plaintiff  
4 because of his protected First Amendment rights. (ECF. No. 62 at 6.) Defendant argues  
5 amendment is futile if it would fail to withstand a motion to dismiss for failure to state a claim,  
6 citing Dougherty v. Town of North Hempstead Bd. Of Zoning Appeals, 282 F.3d 83, 88 (2d Cir.  
7 2002). (ECF No. 62 at 6.)

8 In reply,<sup>3</sup> plaintiff argues that his newly-discovered documents "leave no intelligent  
9 debate" about the involvement of Sgt. Chambers and Sgt. Muhammed "as principals in the  
10 creation, approval and hearing of the RVR they spoon-fed to a willing and waiting Kaur." (ECF  
11 No. 64 at 1.) In addition to "several drafts, private meetings, coaching, approving Chambers  
12 solicited testimony off the record from Kaur while denying plaintiff any witnesses, though  
13 requested," plaintiff contends the most glaring evidence is that both the 128B and RVR authored  
14 by Kaur failed to include any specific violation, but the citation of 3005(b)(1) was added by  
15 Kaur's alleged co-conspirators. (ECF No. 64 at 1-2.) Plaintiff submitted his motion to amend  
16 soon after receipt of the documents appended to his reply. (ECF No. 64 at 5-13.)

17 B. Legal Standard

18 Because defendant has filed an answer, Rule 15(a)(2) governs plaintiff's motion to amend,  
19 as follows:

20 (2) ***Other Amendments.*** In all other cases, a party may amend its  
21 pleading only with the opposing party's written consent or the court's  
leave. The court should freely give leave when justice so requires.

22 Fed. R. Civ. P. 15(a)(2). "Rule 15(a) is very liberal and leave to amend 'shall be freely given

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23 <sup>3</sup> In his reply, plaintiff contends that defendant's opposition was untimely-filed. The proof of  
24 service appended to his motion states that plaintiff deposited his motion in the mail on March 4,  
25 2019. (ECF No. 61 at 26.) Defendant placed his opposition to plaintiff's motion into the mail on  
26 March 28, 2019. (ECF No. 62-1.) Oppositions are due 21 days from the date motions are served.  
27 L.R. 230(l). However, an additional three days are added for service by mail. Fed. R. Civ. P.  
28 6(d). Thus, defendant's deadline to oppose plaintiff's motion to amend was extended to March  
28, 2019, rendering his opposition timely. In his reply, plaintiff refers to a "postmark" date of  
March 29, 2019 (ECF No. 76 at 1); however, defendant's proof of service declares the opposition  
was placed in the mail on March 28, 2019. Court deadlines are not calculated using postmarks.

1 when justice so requires.” AmerisourceBergen Corp. v. Dialysis West, Inc., 465 F.3d 946, 951  
2 (9th Cir. 2006) (quoting Fed. R. Civ. P. 15(a)); accord Sonoma Cnty. Ass’n of Retired Emps. v.  
3 Sonoma Cnty., 708 F.3d 1109, 1117 (9th Cir. 2013). However, courts “need not grant leave to  
4 amend where the amendment: (1) prejudices the opposing party; (2) is sought in bad faith;  
5 (3) produces an undue delay in the litigation; or (4) is futile.” AmerisourceBergen Corp., 465  
6 F.3d at 951; accord Sonoma Cnty. Ass’n of Retired Emps., 708 F.3d at 1117. “[P]rejudice to the  
7 opposing party carries the greatest weight.” Sonoma Cnty. Ass’n of Retired Emps., 708 F.3d at  
8 1117 (quoting Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (per  
9 curiam)). Leave to amend “is properly denied . . . if amendment would be futile.” Carrico v. City  
10 and Cnty. of San Francisco, 656 F.3d 1002, 1008 (9th Cir. 2011) (citing Gordon v. City of  
11 Oakland, 627 F.3d 1092, 1094 (9th Cir. 2010)). Further, “[a] party cannot amend pleadings to  
12 ‘directly contradict an earlier assertion made in the same proceeding.’” Air Aromatics, LLC v.  
13 Opinion Victoria’s Secret Stores Brand Mgmt., Inc., 744 F.3d 595, 600 (9th Cir. 2014) (quoting  
14 Russell v. Rolfs, 893 F.2d 1033, 1037 (9th Cir. 1990)).

### 15 C. Discussion

16 Initially, the undersigned observes that plaintiff’s proposed third amended complaint is  
17 confusing because plaintiff includes multiple theories of liability within each claim, yet fails to set  
18 forth specific facts supporting such new theories. While defendant argues that plaintiff’s claims  
19 against Chambers and Muhammed are related to the adjudication of the RVR, the undersigned  
20 does not construe plaintiff’s claims in this way. Rather, plaintiff alleges that Chambers and  
21 Muhammed conspired with defendant Kaur to author the allegedly false 128B and RVR, which  
22 actions took place prior to the November 18, 2016 hearing on the RVR. Plaintiff includes no  
23 factual allegations demonstrating his due process rights were violated during the RVR hearing,  
24 other than to claim he was injured by the denial of a fair and impartial hearing. Thus, the  
25 undersigned reviews plaintiff’s proposed third amended complaint as directed toward incidents  
26 that took place before the RVR hearing.

27 The undersigned turns now to the motion to amend. As discussed below, the undersigned  
28 finds that plaintiff’s motion to amend should be granted in part and denied in part.

1 New Theories of Liability

2 In his amended complaint, plaintiff adds theories of liability that were not pressed in his  
3 operative pleading, including gender bias or gender discrimination and due process violations.  
4 However, plaintiff fails to include any facts supporting such theories of liability. Although it  
5 appears plaintiff is male and defendant Kaur, Sgt. Chambers and Sgt. Muhammed are all female,  
6 such differences are insufficient, standing alone, to support a claim of gender discrimination.  
7 Similarly, plaintiff includes no factual allegations to support his claim that both his procedural  
8 and substantive due process rights were violated during the preparation of the 128B chrono and  
9 RVR. The undersigned finds that defendant Kaur would be prejudiced by the addition of such  
10 theories at this late stage of the proceedings; plaintiff was clearly aware of the gender of  
11 defendant Kaur and Sgt. Chambers during the 2016 incidents and the RVR hearing. Also,  
12 because the First Amendment provides the textual source of constitutional protection for  
13 plaintiff's retaliation claims, a generalized claim that due process was violated does not extend to  
14 the same allegations.<sup>4</sup> Plaintiff should be denied leave to amend to pursue the newly-alleged  
15 gender and due process claims raised in connection with the pre-RVR hearing incidents.

16 Sgt. Muhammed

17 Plaintiff seeks to add Sgt. Muhammed as a defendant. However, as argued by defendant,  
18 plaintiff sets forth no factual allegations demonstrating that Sgt. Muhammed took an adverse  
19 action against plaintiff.<sup>5</sup> Rather, the documents upon which plaintiff relies demonstrates that it

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21 <sup>4</sup> “Where a particular Amendment ‘provides an explicit textual source of constitutional  
22 protection’ against a particular sort of government behavior, ‘that Amendment, not the more  
23 generalized notion of “substantive due process,” must be the guide for analyzing these claims.”  
24 Albright v. Oliver, 510 U.S. 266, 273 (1994) (quoting Graham v. Connor, 490 U.S. 386, 395  
(1989) (both evaluating Fourth Amendment claims). “Substantive due process does not extend to  
circumstances already addressed by other constitutional provisions.” See Scott v. Robertson,  
2019 WL 6341589, at \*3 (N.D. Cal. Nov. 27, 2019), citations omitted.

25 <sup>5</sup> “‘Prisoners have a First Amendment right to file grievances against prison officials and to  
26 be free from retaliation for doing so.’ Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir. 2012)  
27 (citing Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009)). A viable retaliation claim in the  
28 prison context has five elements: ‘(1) An assertion that a state actor took some adverse action  
against an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4)  
chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably

1 was Sgt. Chambers who instructed defendant Kaur to “change your report to a CDCR Rule  
2 Violation Report (115).” (ECF No. 64 at 12.) While the emails provided by plaintiff demonstrate  
3 that Sgt. Muhammed was somehow involved, perhaps by discussing it with Kaur or Sgt.  
4 Chambers,<sup>6</sup> the emails confirm that it was Kaur who drafted the 128B chrono and the RVR, not  
5 Sgt. Muhammed. (ECF No. 64 at 8-10, 12, 13.) The only adverse actions identified by plaintiff  
6 in his proposed amended pleading are the 128B chrono and the RVR. Plaintiff cannot state a  
7 retaliation claim against Sgt. Muhammed absent an identified adverse action. Therefore, plaintiff  
8 should not be granted leave to amend to name Sgt. Muhammed as a defendant because such  
9 amendment would be futile.

10 Sgt. Chambers

11 In support of his proposed amended pleading, plaintiff has identified documentary  
12 evidence tending to show that Sgt. Chambers was involved in the preparation of the RVR, indeed,  
13 instructed defendant Kaur to prepare the RVR, apparently in addition to the 128B chrono. In his  
14 third amended complaint, plaintiff also states that he has had issues in the past with Sgt.  
15 Chambers concerning law library access, and alleges she was not allowed in the area of the law  
16 library due to complaints about her harassing inmates waiting in line to attend the library. (ECF  
17 No. 61 at 8.) Because Sgt. Chambers’ involvement in the preparation of the 128B and RVR was  
18 only recently discovered, plaintiff should be granted leave to amend to add Sgt. Chambers as a  
19 defendant. Plaintiff’s motion was filed before the close of discovery, and discovery disputes

20 \_\_\_\_\_  
21 advance a legitimate correctional goal.’ Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir.  
2005).” (ECF No. 20 at 3.)

22 <sup>6</sup> Even if Sgt. Muhammed encouraged defendant Kaur or Sgt. Chambers to file a false RVR  
23 against plaintiff, the filing of a false RVR by a prison official against a prisoner, standing alone, is  
24 not a per se violation of the prisoner’s constitutional rights. See Muhammad v. Rubia, 2010 WL  
25 1260425, at \*3 (N.D. Cal. Mar. 29, 2010), aff’d 453 F. App’x 751 (9th Cir. 2011) (“[A] prisoner  
26 has no constitutionally guaranteed immunity from being falsely or wrongly accused of conduct  
27 which may result in the deprivation of a protected liberty interest.”) (internal citation omitted).  
28 See also Harper v. Costa, 2009 WL 1684599, at \*2-3 (E.D. Cal. June 16, 2009), aff’d 393 F.  
App’x 488 (9th Cir. 2010) (“Although the Ninth Circuit has not directly addressed this issue in a  
published opinion, district courts throughout California . . . have determined that a prisoner’s  
allegation that prison officials issued a false disciplinary charge against him fails to state a  
cognizable claim for relief under § 1983.”).

1 remain because plaintiff has sought reconsideration of an order compelling discovery responses,  
2 and defendant Kaur recently filed a motion to compel discovery responses. Thus, the  
3 undersigned finds that any prejudice to defendant Kaur would be moderate. There is no evidence  
4 of bad faith or undue delay because plaintiff filed his motion to amend shortly after receiving the  
5 documents through discovery. In addition, amending the pleading to name Sgt. Chambers would  
6 not be futile because, contrary to defendant Kaur's argument that plaintiff failed to identify an  
7 adverse action, the preparation and prosecution of the allegedly false RVR is the alleged adverse  
8 action. Therefore, the undersigned finds that the factors weigh in favor of granting plaintiff's  
9 motion to amend to name Sgt. Chambers as a defendant in connection with plaintiff's retaliation  
10 claim, based on incidents occurring in 2016, including the authorship of the 128B and RVR, prior  
11 to the RVR hearing.

12         Once the district court addresses these findings and recommendations, the court will issue  
13 an order as to service of process on Sgt. Chambers, if appropriate.

#### 14 Putative Procedural Due Process Claims Arising During the RVR Hearing

15         In his first amended complaint ("FAC"), plaintiff previously named Sgt. Chambers as a  
16 defendant based on claims that she had violated plaintiff's due process rights during the RVR  
17 hearing on November 18, 2016. It appears plaintiff chose not to pursue a separate action against  
18 Sgt. Chambers, even after the June 20, 2017 order finding any procedural due process claim  
19 arising from the RVR hearing was unrelated to plaintiff's retaliation claim against defendant Kaur  
20 (ECF No. 20 at 7).<sup>7</sup>

21         Now plaintiff has identified documents demonstrating Sgt. Chambers' involvement in  
22 preparing the RVR, suggesting plaintiff may be able to demonstrate Sgt. Chambers was not an  
23 impartial decision-maker, given her role in reviewing and editing the RVR, yet still serving as the  
24 hearing officer. In addition, in his motion to amend, plaintiff claims he requested witnesses, but  
25 was denied "any witnesses." (ECF No. 64 at 2.) Thus, it appears plaintiff has at least two

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26 <sup>7</sup> A review of cases filed in the Eastern District revealed no subsequent filing by plaintiff against  
27 Sgt. Chambers. A court may take judicial notice of court records. See, e.g., Bennett v.  
28 Medtronic, Inc., 285 F.3d 801, 803 n.2 (9th Cir. 2002) ("[W]e may take notice of proceedings in  
other courts, both within and without the federal judicial system, if those proceedings have a  
direct relation to matters at issue") (internal quotation omitted).



1 putative procedural due process grounds on which to challenge the November 18, 2016 hearing  
2 on the RVR.

3 However, plaintiff's putative due process claims against Sgt. Chambers based on what  
4 took place during the RVR hearing are not properly related to plaintiff's retaliation claims against  
5 defendant Kaur. Plaintiff may join multiple claims if they are all against a single defendant. Fed.  
6 R. Civ. P. 18(a). Unrelated claims against different defendants must be pursued in multiple  
7 lawsuits. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). As explained in Rule 20 of the  
8 Federal Rules of Civil Procedure, a person may be joined in one action as a defendant if:

9 (A) any right to relief is asserted against them jointly, severally, or in  
10 the alternative with respect to or arising out of the same transaction,  
occurrence, or series of transactions or occurrences; and

11 (B) any question of law or fact common to all defendants will arise  
12 in the action.

13 Fed. R. Civ. P. 20(a)(2). Here, the questions of law and fact pertaining to plaintiff's procedural  
14 due process protections during the RVR hearing<sup>8</sup> differ from the evaluation of whether or not  
15 defendant Kaur or Sgt. Chambers retaliated against plaintiff in preparing the 128B chrono or  
16 RVR before the hearing on the RVR in violation of the First Amendment, Rhodes, 408 F.3d at  
17 567-68. Plaintiff has identified no facts involving defendant Kaur in an alleged violation of  
18 plaintiff's procedural due process rights during the hearing. Thus, plaintiff's putative due process  
19 claims against Sgt. Chambers based on the November 18, 2016 RVR hearing must be pursued in  
20 a separate action, as previously explained in the June 20, 2017 order. (ECF No. 20 at 6-7.)

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21 <sup>8</sup> Plaintiff was entitled to limited due process rights during the hearing. Prisoners subjected to  
22 disciplinary action are entitled to certain procedural protections under the Due Process Clause,  
23 but are not entitled to the full panoply of rights afforded to criminal defendants. See Wolff v.  
McDonnell, 418 U.S. 539, 556 (1974); see also Superintendent v. Hill, 472 U.S. 445, 455-456  
24 (1985); United States v. Segal, 549 F.2d 1293, 1296-99 (9th Cir. 1977) (prison disciplinary  
25 proceedings command the least amount of due process along the prosecution continuum). Under  
Wolff, prison disciplinary actions are subject to the following procedural requirements: (1)  
26 written notice of the charges; (2) a hearing, with at least 24-hours advance notice; (3) a written  
27 statement by the fact finders of the evidence relied on and the reasons for taking disciplinary  
28 action; (4) the prisoner's right to call witnesses in his or her defense, if doing so would not be  
unduly hazardous to institutional safety or correctional goals; and (5) legal assistance to prisoners  
who are illiterate or whose issues are particularly complex. Wolff, 418 U.S. at 556-71. Finally,  
prisoners are entitled to an impartial decision-maker. Id. at 571.

1 Plaintiff was aware of any deprivation of witnesses at the time of the hearing, and was  
2 subsequently informed by the court that he must pursue any procedural due process claim against  
3 Sgt. Chambers in a separate action, but did not file one. Thus, it is unclear whether plaintiff  
4 intends to pursue such claims at this time. Plaintiff is cautioned that if he intends to pursue  
5 procedural due process claims against Sgt. Chambers in a separate action, the filing deadline for  
6 pursuing such claims is governed by California law.<sup>9</sup>

7 IV. Conclusion

8 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall detach  
9 plaintiff's proposed third amended complaint (ECF No. 61 at 4-23) and file and docket the third  
10 amended complaint as of March 7, 2019 (ECF No. 61-1).

11 Further, IT IS RECOMMENDED that:

12 1. Plaintiff's motion to amend (ECF No. 61) be granted as to his retaliation claims against  
13 Sgt. Chambers, and denied in all other respects;

14 2. This action shall proceed solely on the retaliation claims raised in his third amended  
15 complaint against defendant Kaur and Sgt. Chambers based on actions taken prior to the RVR  
16 hearing on November 18, 2016.

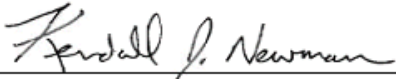
17 These findings and recommendations are submitted to the United States District Judge  
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
19 after being served with these findings and recommendations, any party may file written  
20 objections with the court and serve a copy on all parties. Such a document should be captioned  
21 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the  
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23 <sup>9</sup> Generally, plaintiff has four years from the date of the RVR hearing to file suit. See Jones v.  
24 Blanas, 393 F.3d 918, 927 (2004) (stating that federal courts should apply the forum state's  
25 statute of limitations for personal injury actions because § 1983 contains no specific statute of  
26 limitations); see also Cal. Civ. Proc. Code § 335.1 (establishing a two year statute of limitations  
27 for personal injury actions occurring after January 1, 2003); Cal. Civ. Proc. Code § 352.1 (2007)  
28 (providing a two-year tolling provision of a statute of limitations for prisoners serving less than a  
life sentence). But if plaintiff is incarcerated for a life term without the possibility of parole, he is  
not entitled to such statutory tolling. See Cal. Civ. Proc. Code § 352.1(a) (requirements for  
tolling due to incarceration).

1 objections shall be filed and served within fourteen days after service of the objections. The  
2 parties are advised that failure to file objections within the specified time may waive the right to  
3 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 Dated: December 19, 2019

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7 KENDALL J. NEWMAN  
8 UNITED STATES MAGISTRATE JUDGE

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