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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FREDERICK E. LEONARD,  
Plaintiff,  
v.  
M. THOMPSON, et al.,  
Defendants.

No. 2:16-cv-2767 DB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action. Plaintiff claims defendant Thompson failed to protect him in violation of the Eighth Amendment and defendant Clemente violated his due process rights during a disciplinary hearing. This action was remanded from the Ninth Circuit on March 10, 2020. (ECF No. 56.)

Plaintiff initiated this action by filing a complaint on November 22, 2016. (ECF No. 1.) Plaintiff consented to magistrate judge jurisdiction. (ECF No. 5.) The original complaint alleged that defendants' actions violated various aspects of state law. The undersigned screened and dismissed the complaint with leave to amend for failure to state a claim. (ECF No. 9.)

Thereafter, plaintiff filed a first amended complaint. (ECF No. 15.) Upon screening the amended complaint, it was determined that the amended complaint stated a cognizable failure to protect claim against Thompson and a cognizable due process claim against Clemente. (ECF No. 16 at 5.) The undersigned determined that the factual allegations did not state a claim as to defendant Metzger. (Id.) While the claims against Metzger were dismissed with leave to amend,

1 the undersigned found that based on the factual allegations presented it would not be possible for  
2 plaintiff to state a claim as to Metzger. (Id.)

3 The court directed plaintiff to submit service documents for defendants Thompson and  
4 Clemente. (Id. at 6.) Defendants were served and submitted an answer. Thereafter, the parties  
5 engaged in discovery. Defendants consented to magistrate judge jurisdiction. (ECF No. 40.)  
6 Following close of discovery, defendants filed separate motions for summary judgment. (ECF  
7 Nos. 41, 42.) Plaintiff filed a cross motion for summary judgment and response. (ECF No. 46.)

8 The undersigned granted defendants' motions for summary judgment, denied plaintiff's  
9 cross motion for summary judgment, and entered judgment. (ECF Nos. 51, 52.) Plaintiff filed a  
10 timely notice of appeal. (ECF No. 53.) The Ninth Circuit vacated the undersigned's July 25,  
11 2017 screening order with a citation to Williams v. King, 875 F.3d 500, 503-04 (9th Cir. 2017)  
12 (holding a Magistrate Judge does not have jurisdiction to dismiss a case unless all of the parties  
13 have consented to Magistrate Judge jurisdiction). (ECF No. 56.) The appellate court further  
14 stated that it had not considered plaintiff's arguments regarding summary judgment. (Id.) This  
15 action was remanded to the district court for further proceedings.

16 Metzger was dismissed from this action before he was served, and therefore, never  
17 consented to magistrate jurisdiction. Accordingly, the undersigned will direct the Clerk of the  
18 Court to assign this action to a district judge. The undersigned will also recommend that Metzger  
19 be dismissed for the reasons stated in the court's July 25, 2017 screening order. (ECF No. 16 at  
20 5.) It will further be recommended, for the reasons stated in the court's March 11, 2019 order that  
21 defendant's summary judgment motions be granted, and plaintiff's cross motion be denied. (ECF  
22 No. 51.)

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1 Accordingly, the Clerk of the Court is ORDERED to randomly assign this action to a  
2 district judge.

3 IT IS HEREBY RECOMMENDED that:

- 4 1. Defendant Metzger be dismissed from this action;
- 5 2. Defendant Clemente's motion for summary judgment (ECF No. 41) be granted;
- 6 3. Defendant Thompson's motion for summary judgment (ECF No. 42) be granted; and
- 7 4. Plaintiff's cross-motion for summary judgment (ECF No. 46) be denied.

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

16 Dated: May 2, 2020

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20 DEBORAH BARNES  
21 UNITED STATES MAGISTRATE JUDGE  
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25 DB/orders/prisoner-civil rights/leon2767.remand  
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