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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RODERICK WILLIAM LEAR,

Plaintiff,

v.

D. AVILA, et al.,

Defendants.

No. 2:17-cv-0326-JAM-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in a civil action. On February 12, 2020, the court informed plaintiff that he could proceed with a viable Americans with Disabilities Act claim against defendant High Desert State Prison (“HDSP”). ECF No. 56. Defendant High Desert State Prison, by special appearance, objected to that order on the grounds that “HDSP is not an entity capable of being sued under Fed. R. Civ. P. 17 and is only a building.” ECF No. 57 at 1. HDSP points out that it is simply a component of the California Department of Corrections and Rehabilitation (“CDCR”), which is the public entity that operates HDSP under California Penal Code sections 5000, 5003.

Thus, taking plaintiff’s allegations as true, the alleged conduct giving rise to his claims under the Americans with Disabilities Act is attributable to employees or officers acting under the authority of CDCR. Title II of the ADA provides for an action against public entities, including


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entities operating prisons, but here that entity is the CDCR. Therefore, construing plaintiff’s complaint liberally, the court recommends that CDCR be substituted in place of HDSP as defendant to this action.

Accordingly, IT IS RECOMMENDED that CDCR be substituted in place of HDSP as defendant in this action.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may waive the right to appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

DATED: July 22, 2020.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE