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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT COLEMAN,
Plaintiff,
v.
T. VIRGA, et al.,
Defendants.

No. 2:17-cv-0851 KJM KJN P

ORDER

Plaintiff, a state prisoner proceeding pro se, has 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 January 11, 2021, the magistrate judge filed findings and recommendations, ECF No. 98, which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff has filed objections to the findings and recommendations, ECF No. 99, defendants have filed a response to plaintiff’s objections, ECF No. 100, and plaintiff has filed a reply to defendants’ response, ECF No. 101.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having reviewed the file, for the reasons explained in this order the court declines to adopt the findings and recommendations at this time

1 and refers the matter back to the assigned magistrate judge for further proceedings consistent with
2 this order.

3 The magistrate judge recommends granting defendants' June 9, 2020 motion for summary
4 judgment, ECF No. 80, and striking plaintiff's cross-motion for summary judgment, ECF No. 84,
5 as untimely, ECF No. 98 at 40. The deadline for filing dispositive motions in this action was
6 June 12, 2020. ECF No. 76. Defendants timely filed their motion for summary judgment on
7 June 9, 2020. ECF No. 80. Plaintiff's opposition to the motion was due twenty-one days after
8 service of the motion. *See* ECF No. 21 at 3; ECF No. 65 at 5. On June 29, 2020, plaintiff timely
9 filed an opposition to defendants' motion for summary judgment. ECF No. 84. Plaintiff included
10 a cross-motion for summary judgment with his opposition. *Id.*

11 Local Rule 230(e) provides:

12 **(e) Related or Counter-Motions.** Any counter-motion or other motion
13 that a party may desire to make that is related to the general subject
14 matter of the original motion shall be served and filed in the manner and
15 on the date prescribed for the filing of opposition. If a counter-motion
16 or other related motion is filed, the Court may continue the hearing on
the original and all related motions so as to give all parties reasonable
opportunity to serve and file oppositions and replies to all pending
motions.

17 L.R. 230(e) (E.D. Cal.). Plaintiff's cross-motion for summary judgment is a "counter-motion . . .
18 related to the general subject of the original motion" and was filed as part of plaintiff's timely
19 opposition. It is therefore timely under Local Rule 230(e).

20 Though recommending plaintiff's cross-motion be stricken, the magistrate judge
21 considered "the arguments and evidence in support of" that motion "as part of plaintiff's
22 opposition to defendants' summary judgment motion." ECF No. 98 at 2. However, "when
23 parties submit cross-motions for summary judgment, 'each motion must be considered on its own
24 merits.'" *Fair Housing Council of Riverside County, Inc. v. Riverside Two*, 249 F.3d 1132, 1136
25 (9th Cir. 2001). Because plaintiff's cross-motion for summary judgment is timely under Local
26 Rule 230(e) it must be separately analyzed and considered on its own merits. Accordingly, this
27 court will defer consideration of the findings and recommendations on defendants' motion for

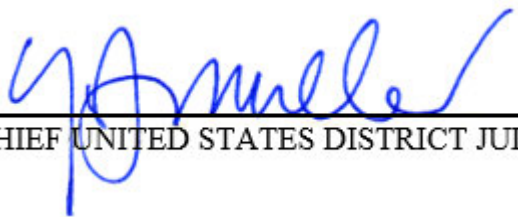
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1 summary judgment and refer the matter back to the assigned magistrate judge for further
2 proceedings consistent with this order.

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. The findings and recommendations filed January 11, 2021, are not adopted at this time;
- 5 2. Plaintiff's cross-motion for summary judgement (ECF No. 84) is timely filed; and
- 6 3. This matter is referred back to the assigned magistrate judge for further proceedings
7 consistent with this order.

8 DATED: September 29, 2021.

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12 CHIEF UNITED STATES DISTRICT JUDGE
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