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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GREGORY C. BONTEMPS,
Plaintiff,
v.
R. THOMAS,
Defendant.

No. 2:19-cv-01537-TLN-DB

ORDER

Plaintiff Gregory C. Bontemps (“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 pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On October 10, 2019, the magistrate judge filed findings and recommendations herein which were served on Plaintiff and which contained notice to Plaintiff that any objections to the findings and recommendations were to be filed within fourteen days. (ECF No. 8.) On October 24, 2019, Plaintiff filed Objections to the Findings and Recommendations. (ECF No. 9.)

This Court reviews de novo those portions of the proposed findings of fact to which objection has been made. 28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp. v. Commodore Business Machines*, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982). As to any portion of the proposed findings of fact to which no objection has been made, the Court assumes its correctness and decides the motions on the applicable law. See *Orand v. United*

1 States, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are
2 reviewed de novo. See *Britt v. Simi Valley Unified Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

3 Having carefully reviewed the entire file under the applicable legal standards, the Court
4 finds the Findings and Recommendations to be supported by the record and by the magistrate
5 judge's analysis.

6 Plaintiff gives no argument with respect to his prior cases, which the magistrate judge
7 determined constitute "strikes" under 28 U.S.C. § 1915(g). Instead, Plaintiff's objections appear
8 to rely on Federal Rule of Civil Procedure 56. (ECF No. 9 at 2.) Plaintiff also appears to argue
9 that the Defendants have misinterpreted the limited purpose of 28 U.S.C. § 1915A. (Id.) The
10 Court finds these arguments are baseless. Plaintiff's Complaint has not yet been screened under
11 28 U.S.C. § 1915A; nor have any Defendants been served in this action. Furthermore, Rule 56
12 pertains to summary judgment motions and is therefore inapplicable here. Fed. R. Civ. P. 56.
13 Therefore, Plaintiff's objections are overruled.

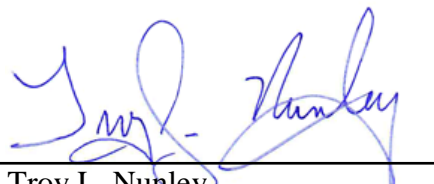
14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. The Findings and Recommendations, filed October 10, 2019, are adopted in full;
- 16 2. Plaintiff's Motion to Proceed in Forma Pauperis (ECF No. 6) is DENIED;
- 17 3. The Court finds Plaintiff accrued three strikes under 28 U.S.C. § 1915(g) prior to filing
18 this action; and
- 19 4. The Court orders Plaintiff to pay the \$400.00 filing fee within thirty days or face
20 dismissal of this case.

21 IT IS SO ORDERED.

22 Dated: December 2, 2019

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Troy L. Nunley
United States District Judge