

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

GREGORY JONES,  
  
  Plaintiff,  
  
  v.  
  
INDERPAL BAL, et al.,  
  
  Defendants.

No. 2:19-CV-1971-TLN-DMC-P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Defendant Lizzaraga’s unopposed motion to dismiss, ECF No. 50. The remaining defendants (Smith, Wong, Covello, Omari, Masbad, Martinez, Patterson, Vasquez, Leonard, Vila, Bal, Shattuck, Robert, Vaughn, and Quiring) have filed an answer and do not join in the pending motion.

In his unopposed motion to dismiss, Defendant Lizzaraga, the former warden of Mule Creek State Prison, argues that Plaintiff’s operative second amended complaint fails to contain allegations indicating Lizzaraga’s personal involvement in the alleged constitutional violations. See ECF No. 50-1. Pursuant to Eastern District of California Local Rule 230(c), (l), the Court construes Plaintiff’s failure to file an opposition to Defendant Lizzaraga’s motion as consent to the relief requested. The Court will, therefore, recommend that the unopposed motion be granted.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Based on the foregoing, the undersigned recommends that:

1. Defendant Lizzaraga’s unopposed motion to dismiss, ECF No. 50, be granted;
2. Defendant Lizzaraga be dismissed with prejudice as a defendant to this action; and
3. The matter be referred back to the assigned Magistrate Judge for pre-trial scheduling.

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 14 days after being served with these findings and recommendations, any party may file written objections with the Court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: January 24, 2023

  
\_\_\_\_\_  
DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE