IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA D. BLAND,

Plaintiff,

v.

M. PIERSON, et al.,

Defendants.

No. 2:20-CV-1165-DAD-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 are the following:

ECF No. 47	Plaintiff's motions for summary judgment, constitutional challenge, enjoinment, expungement, and request for judicial notice.
ECF No. 60	Defendants' opposition.
ECF No. 62	Plaintiff's objections to Defendants' opposition, construed as Plaintiff's reply.
ECF No. 63	Defendants' motion for summary judgment
ECF No. 64	Plaintiff's opposition.
ECF No. 70	Defendants' reply.

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Plaintiff submitted a number of other filings which appear to also respond to Defendants' motion for summary judgment. These motions and the parties' related filings in response and support are as follows:

ECF No. 65	Plaintiff's motion to substitute and for discovery.
ECF No. 68	Defendants' opposition to Plaintiff's motion to substitute and for discovery.
ECF No. 69	Plaintiff's motion for consideration.
ECF No. 72	Plaintiff's reply.
ECF No. 75	Plaintiff's request for judicial notice.
ECF No. 76	Defendants' opposition to Plaintiff's motion for consideration.
ECF No. 77	Defendants' opposition to Plaintiff's request for judicial notice.
ECF No. 78	Plaintiff's notice regarding photographs.
ECF No. 79	Plaintiff's supplement to his opposition.
ECF No. 81	Plaintiff's addendum to his opposition.

The Court considers these filings as the parties' briefing on cross-motions for summary judgment.[1]

Also before the Court are Defendants' motion to revoke Plaintiff's in forma pauperis status, ECF No. 28, and Defendants' motion for ruling thereon, ECF No. 86.

I. BACKGROUND

A. Procedural History

Upon screening of Plaintiff's original complaint, the Court permitted Plaintiff an opportunity to file a first amended complaint or proceed on claims in the original complaint identified as cognizable. See ECF No. 10, pg. 6. In response, Plaintiff filed a "Notice to and Consent with the Court's Order" stating that Plaintiff declines to amend the original complaint,

[1] Defendants' motions to strike various of Plaintiff's filings as improper sur-replies have been denied. See ECF No. 84.

choosing instead to move forward with the cognizable claims identified in the Court's screening order. See ECF No. 11, pg. 1. The Court construed Plaintiff's filing as a notice of voluntary dismissal of Defendants Jennings, Lane, Madsen, Pickett, and Diaz and of all claims except Plaintiff's First Amendment claims against Defendants Pierson and Brown. See ECF No. 13, pg. 2. Defendants were served and filed an answer.

On January 21, 2022, the Court issued a discovery and scheduling order for this case. See ECF No. 27. Following the close of discovery on July 25, 2022, the parties filed the currently pending cross-motions for summary judgment. See ECF Nos. 47 and 63.

B. Plaintiff's Allegations

Plaintiff alleges that the relevant events took place at High Desert State Prison (HDSP). See ECF No. 1, pg. 1. According to Plaintiff, on March 29, 2019, Defendants Pierson and Brown would not allow Plaintiff to receive three photos of young men wearing diapers. See id. at 5. According to Plaintiff, the photos were disallowed because they were described as depictions "of boys who appear to be minors and/or under 18 wearing diapers" and deemed contraband pursuant to Title 15 of the California Code of Regulations, § 3006. See id. at 5, 7.

Plaintiff states that he is a gay man who has a sexual attraction to "twinks wearing diapers" and that he has received such photos at other prisons since 2015 without incident. See id. at 7. According to Plaintiff, the United States Supreme Court has disallowed state regulations of materials which merely "appear to be" or "conveyed the impression" that the materials related to inappropriate depictions of minors. See id. Plaintiff claims a violation of his First Amendment right to free speech. See id.

II. THE PARTIES' EVIDENCE

Plaintiff's motion for summary judgment consists of seven pages and is not accompanied by a separate statement of undisputed facts or any evidence. See ECF No. 47. Nonetheless, the Court considers Plaintiff's various filings outlined above in response to Defendants' motion for summary judgment. Because Defendants' motion is properly presented under the rules, the Court discusses Defendants' evidence first and discusses Plaintiff's evidence

in the context of opposition to Defendants' evidence.

A. Defendants' Evidence

Defendants' motion for summary judgment is supported by a separate statement of undisputed facts, ECF No. 63-2, as well as the following:

ECF No. 63-3	Declaration of defense counsel.
ECF No. 63-4	Exhibit A to declaration of defense counsel.
ECF No. 63-7	Declaration of M. Brown.
ECF No. 63-8	Exhibit A to declaration of M. Brown.
ECF No. 63-9	Declaration of M. Pierson.
ECF No. 63-10	Declaration of K. Grether.

Defendants have also lodged the transcript of Plaintiff's deposition. See ECF No 63-11.

Exhibit A to the declaration of defense counsel consists of portions of the transcript of Plaintiff's June 27, 2022, deposition and Exhibit D attached thereto which, in turn, consists of a CDCR Form 1819 Notice of Disapproval for Mail/Packages/Publications. See ECF No. 63-4. Exhibit A to Defendant Brown's declaration also consist of the same CDCR Form 1819 Notice of Disapproval for Mail/Packages/Publications. See ECF No. 63-8.

According to Defendants, the following facts are not in dispute:

> 1. Plaintiff Joshua D. Bland is an inmate who was housed at High Desert State Prison from February 7 to July 16, 2019. On June 10, 2020, Bland filed his Complaint, and alleged that Defendants Captain M. Brown and Office Assistant M. Pierson prevented him from receiving three photos of "twinks" wearing diapers, indicating that such photos violated section 3006(3)(15)(a) of Title 15.
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> 2. Bland defines "twinks" as "gay males between the ages of 18 and 24 that look adolescent, but they are of age."
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> 3. Bland is in prison for possession of child pornography.[2]
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> 4. On March 29, 2019, a mailroom employee discovered three photos of what appeared to be minors in diapers and posing in a sexual manner.

[2] Plaintiff's conviction offense would not typically be relevant in a conditions-of-confinement case. For the reasons discussed here, however, the Court finds that it is relevant in this case and, as such, notes the fact here.

5. Assistant Pierson reviewed the photos and determined that due to the nature of the photos, they were not appropriate for distribution to Bland because they constituted contraband under section 3006(c)(15)(A).

6. Assistant Pierson referred the photos to her acting supervisor and to Joe Shelton, the supervisor of mailroom and business services.

7. The photos were then referred to Captain Brown for his review.

8. Also on March 29, 2019, Assistant Pierson completed the CDCR 1819 form, Notification of Disapproval for Mail/Packages/Publications, which is issued to inmates when mail addressed to them is disallowed.

9. Assistant Pierson forwarded the form to Captain Brown, who was assigned to Facility D.

10. Captain Brown did not see the photos at issue.

11. Captain Brown's name appeared on the CDCR 1819 form that was sent to Bland on April 3, 2019, because Captain Brown was assigned to Facility D.

12. Captain Brown did not sign this form.

13. Captain Grether viewed the photos, which depicted young boys approximately 12 to 13 years old who were wearing only diapers and posing in a provocative manner.

14. Captain Grether determined that the photos were not appropriate for distribution to Bland because they constituted contraband under section 3006(c)(15)(A) of Title 15 of the California Code of Regulations.

15. CDCR has banned sexually explicit material, such as the photos at issue, because inmates would possibly engage in sexual conduct directly in front of staff members, and possession of materials appealing to sex offenders may expose them to violence.

16. Also, if other inmates knew sex offenders were allowed to possess pornographic material including minors, such inmates may react violently.

17. On April 3, 2019, Captain Grether issued the CDCR 1819 form to Bland.

18. To the best of Captain Grether's recollection, Captain Grether signed the form on Captain Brown's behalf because Captain Brown was unavailable.

19. Neither Assistant Pierson nor Captain Brown spoke with Bland about the photos at issue.

20. Assistant Pierson did not speak with Captain Brown about the photos at issue.

See ECF No. 63-2, pgs. 1-3.

B. Plaintiff's Evidence

In connection with the pending cross-motions for summary judgment, Plaintiff has filed the following:

ECF No. 47	Plaintiff's motions for summary judgment, constitutional challenge, enjoinment, expungement, and request for judicial notice.
ECF No. 62	Plaintiff's objections to Defendants' opposition, construed as Plaintiff's reply.
ECF No. 64	Plaintiff's opposition to Defendants' motion for summary judgment.
ECF No. 65	Plaintiff's motion to substitute and for discovery.
ECF No. 69	Plaintiff's motion for consideration.
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ECF No. 78	Plaintiff's notice regarding photographs.
ECF No. 79	Plaintiff's supplement to his opposition.
ECF No. 81	Plaintiff's addendum to his opposition.

The Court has considered each of Plaintiff's relevant filings and any documentation or exhibits attached thereto.

III. DISCUSSION

The Court herein addresses the parties cross-motions for summary judgment and related filings. For the reasons discussed below, the Court finds that the Plaintiff's motion for summary judgment should be denied, Defendants' motion for summary judgment should be granted, and that all other pending motions should be denied as moot.

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The Federal Rules of Civil Procedure provide for summary judgment or summary adjudication when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). The standard for summary judgment and summary adjudication is the same. See Fed. R. Civ. P. 56(a), 56(c); see also Mora v. ChemTronics, 16 F. Supp. 2d. 1192, 1200 (S.D. Cal. 1998). One of the principal purposes of Rule 56 is to dispose of factually unsupported claims or defenses. See Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Under summary judgment practice, the moving party

> . . . always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact.

Id., at 323 (quoting former Fed. R. Civ. P. 56(c)); see also Fed. R. Civ. P. 56(c)(1).

If the moving party meets its initial responsibility, the burden then shifts to the opposing party to establish that a genuine issue as to any material fact actually does exist. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to establish the existence of this factual dispute, the opposing party may not rely upon the allegations or denials of its pleadings but is required to tender evidence of specific facts in the form of affidavits, and/or admissible discovery material, in support of its contention that the dispute exists. See Fed. R. Civ. P. 56(c)(1); see also Matsushita, 475 U.S. at 586 n.11. The opposing party must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome of the suit under the governing law, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could return a verdict for the nonmoving party, Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1436 (9th Cir. 1987). To demonstrate that an issue is genuine, the opposing party "must do more than simply show that there is some metaphysical doubt as to the material facts . . . . Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no

'genuine issue for trial.'" Matsushita, 475 U.S. at 587 (citation omitted). It is sufficient that "the claimed factual dispute be shown to require a trier of fact to resolve the parties' differing versions of the truth at trial." T.W. Elec. Serv., 809 F.2d at 631.

In resolving the summary judgment motion, the Court examines the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any. See Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed, see Anderson, 477 U.S. at 255, and all reasonable inferences that may be drawn from the facts placed before the court must be drawn in favor of the opposing party, see Matsushita, 475 U.S. at 587. Nevertheless, inferences are not drawn out of the air, and it is the opposing party's obligation to produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff'd, 810 F.2d 898, 902 (9th Cir. 1987). Ultimately, "[b]efore the evidence is left to the jury, there is a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury could properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed." Anderson, 477 U.S. at 251.

In their cross-motions for summary judgment, the parties argue that they are entitled to judgment as a matter of law in their favor on Plaintiff's First Amendment claim. See ECF Nos. 47 and 63. At issue is Plaintiff's claim that Defendants violated his First Amendment right to free speech by denying him access to materials and/or publications depicting "twinks wearing diapers." Before the Court now are the parties' arguments and evidence testing whether a trial on the merits of this claim is required. Each side contends the Court should enter judgment in their favor as a matter of law because the evidence is undisputed. For the reasons discussed below, the Court finds that both parties' requests for summary judgment should be denied.

To prevail on his motion for summary judgment, Plaintiff must show that the undisputed evidence establishes each element of his claim. Defendants argue in their motion for summary judgment that Plaintiff cannot do so for the following reasons: (1) Plaintiff cannot show that Defendant Brown was involved with the denial of materials and/or publication; and (2) Plaintiff cannot prevail against either defendant because the undisputed evidence establishes a

legitimate penological reason justifying denial of materials and/or publications depicting "twinks wearing diapers." See ECF No. 63-1.

A. Involvement of Defendant Brown

To sustain a claim under 42 U.S.C. § 1983, the plaintiff must allege an actual connection or link between the actions of the named defendants and the alleged deprivations. See Monell v. Dep't of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations concerning the involvement of official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Rather, the plaintiff must set forth specific facts as to each individual defendant's causal role in the alleged constitutional deprivation. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

Defendants argue:

> Captain Brown did not view the photos Bland ordered, nor did he issue the CDCR 1819 form; thus, he did not personally participate in an alleged violation of Bland's First Amendment rights and the claim against Captain Brown fails.
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> * * *
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> Here, although Captain Brown's name appears on the April 3, 2019 CDCR 1819 form notifying Bland of the disallowance of the photos of "twinks," Captain Brown did not see the photos or sign the form. (DSUF, ¶¶ 16-18.) Thus, Captain Brown did not play any role in withholding the photos from Bland, and he did not personally participate in any alleged violation of Bland's First Amendment rights. Therefore, Captain Brown is entitled to summary judgment on that basis.
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> ECF No. 63-1, pgs. 5-6.

The Court finds Defendants' argument to be unpersuasive. More specifically, Defendants' argument is inconsistent. On the one hand, Defendants content that Captain Brown had no personal involvement in denial of access to the material at issue. On the other hand, Defendants admit that Captain Brown signed the CDCR Form 1819 which resulted in the denial

of access to materials at issue. By signing the form, Captain Brown became personally involved whether he saw the photographs at issue or not. Based on the evidence submitted by Defendants, the Court rejects the notion that Defendant Brown should escape liability for lack of a sufficient causal link.

B. Merits of Plaintiff's First Amendment Claim

A prison regulation which infringes a First Amendment right "is valid if it is reasonably related to legitimate penological interests." Turner v. Safley, 482 U.S. 78, 79 (1987); see also Mauro v. Arpaio, 188 F.3d 1054, 1058 (9th Cir. 1999) (en banc) (upholding ban on material depicting frontal nudity). In making this determination, the Court considers the following factors: (1) whether there is a valid, rational connection between the regulation and the interest used to justify the regulation; (2) whether prisoners retain alternative means of exercising the right at issue; (3) the impact the requested accommodation will have on inmates, prison staff, and prison resources generally; and (4) whether the prisoner has identified easy alternatives to the regulation which could be implemented at a minimal cost to legitimate penological interests. See Turner, 482 U.S. at 89-91; Mauro; 188 F.3d at 1058-59.

When considering prison regulations on in-coming publications, "[s]ome content regulation is permissible in the prison context." McCabe v. Arave, 827 F.2d 634, 638 (9th Cir. 1987); Mauro, 188 F.3d at 1059. In light of concerns of sexual harassment of prison guards, prison officials may prohibit receipt of sexually explicit materials. See Mauro, 188 F.3d at 1060; see also Frost v. Symington, 197 F.3d 348, 357 (9th Cir. 1999).

The Court must apply the foregoing standards to the California prison regulations under which Plaintiff was prohibited from possessing the materials at issue here. Defendants describe the applicable regulations as follows:

> Title 15 of the California Code of Regulations mandates that mailroom staff inspect non-confidential inmate mail to prevent the entry of contraband into the institution. Cal. Code Regs., tit. 15, § 3134(c)(3).1 Title 15 defines contraband as "anything which is not permitted, in excess of the maximum quantity permitted, or received or obtained from an unauthorized source." Cal. Code Regs., tit. 15, § 3000. Contraband includes obscene material, which is "material taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest; and is material which taken as a whole, depicts sexual

> conduct; and which, taken as a whole, lacks serious literary, artistic, political, or scientific value." Cal. Code Regs., tit. 15, § 3006(c)(15)(A). Contraband also includes, in relevant part, materials that appeal to deviant sexual groups or conduct in which one of the participants is a minor and appears to be under 18 years of age. Cal. Code Regs., tit. 15, § 3006(c)(15)(B), (C)(6).
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> Inmates are not permitted to possess, have in their control, or receive in the mail obscene material. Cal. Code Regs., tit. 15, § 3135(d). When mailroom staff identify a piece of mail that satisfies the definition of obscene material and decide to withhold the mail item, they must send a CDCR 1819 form to the inmate. Cal. Code of Regs., tit. 15, § 3136.
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> ECF No. 63-1, pgs. 3-4.

Defendants argue the regulations satisfy the Turner factors. According to Defendants:

> These regulations are reasonably related to the legitimate penological interest of preventing inmates from engaging in sexual misconduct against staff and other inmates, promoting rehabilitation of sex offenders and efforts to curb sex-offender recidivism, and protecting sex offenders from potential violence against other inmates. These regulations also provide an alternative means of exercising First Amendment rights because the mailroom staff must screen all mail to determine whether there is any artistic, educational, or scientific merit to the material. See Cal. Code of Regs., tit. 15, § 3006(c)(15)(A), 3143(c)(3).
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> Furthermore, the regulations consider the impact that accommodating Bland's alleged right to possess the material would have on staff and other inmates. CDCR banned sexually explicit material because inmates would possibly engage in sexual conduct directly before staff members, and possession of materials appealing to sex offenders may expose them to violence. (DSUF, ¶ 15.) If other inmates knew sex offenders were allowed to possess pornographic material including the portrayal of minors, the inmates may react violently toward the sex offender. (Id., ¶ 16.) This is particularly important here, given that Bland is currently incarcerated for possession of child pornography. (Id., ¶ 3.) Therefore, CDCR's regulations and their application to Bland satisfy the Turner factors, and Bland has not suffered any violation of the First Amendment.
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> ECF No. 63-1, pg. 8-9.

The Court is aware of no cases which hold that the regulations at issue violate the First Amendment, and the Court is satisfied that, on their face, they do not under Turner.

In so finding, the Court rejects Plaintiff's argument that a different standard should apply. Plaintiff argues that "the Supreme Court has held, against, that material that 'appears to be' or 'conveys the impression' that of a minor is indeed protected under the U.S. Constitution as defined in New York v. Ferber, 458 U.S. 747, 765 (1982), and see U.S. v. Sims, 220 F.Supp.2d

1222 (2002)." ECF No. 64, pg. 2. Ferber and Sims are distinguishable. In both Ferber and Sims, the persons charged with receiving or distributing obscene photographs involving children were not inmates. Moreover, Ferber and Sims involved depicting and promoting sexual performances by children under age 16. See Ferber, 458 U.S. 747; Sims, 220 F.Supp.2d 1222. Unlike these case, Plaintiff is an inmate and thus subject to the Turner test which provides that a prison regulation on receiving materials "is valid if it is reasonably related to legitimate penological interests." Turner, 482 U.S. at 7; see also Mauro v. Arpaio, 188 F.3d 1054, 1058 (9th Cir. 1999).

The fundamental question in this case is whether, considering only the undisputed evidence, the subject regulations violated Plaintiff's First Amendment rights as applied to his possession of photographs depicting "twinks wearing diapers." The Court has not been provided with the photographs at issue.

Defendants argue that, as applied to the facts of Plaintiff's case, the decision to deny Plaintiff photographs of "twinks wearing diapers" served the legitimate penological interest of protecting Plaintiff from harm. Under the Eighth Amendment, prison officials have a duty to take reasonable steps to protect inmates from physical abuse. See Hoptowit v. Ray, 682 F.2d 1237, 1250-51 (9th Cir. 1982); Farmer, 511 U.S. at 833. Defendants argue that the photos at issue were properly disavowed by Defendants because "Bland is a sex offender and precluding him from possessing obscene mail is reasonably related to the legitimate penological interest of preventing sexual misconduct within the institution, sex-offender recidivism, and potential violence from other inmates." ECF No. 63-1, pg. 6. This argument, however, is only persuasive if it is undisputed that Plaintiff's possession of photos depicting "twinks wearing diapers" would necessarily subject Plaintiff to harm and if those who would do Plaintiff harm knew he was convicted of a sex offense. The latter has not been established and the former is discussed below.

In the absence of the images in question – which is the focus of many of Plaintiff's filings in response to Defendants' motion – the Court begins its analysis with an inquiry as to what Plaintiff means by "twinks wearing diapers." In this regard, the allegations in the complaint are instructive and, indeed, the Court will provide Plaintiff the benefit of the doubt and presume these allegations are true. In the complaint, Plaintiff states that he was denied three photos of

"twinks wearing diapers." ECF No. 1, pg. 5. Plaintiff further states that he had previously been allowed to receive such materials without incident. See id. at 7. Plaintiff states that he "is a gay man who has a sexual attraction to twinks wearing diapers." Id. Plaintiff's other filings are also instructive. In these he identifies as "boysexual." ECF Nos. 65, 81.

Given Plaintiff's own terms – "twinks wearing diapers" and "boysexual" – combined with his statement regarding his sexual attraction, the Court finds that there is no dispute as to the subject matter of the photos and it is not necessary to examine these photos to make a determination here as to the propriety of Defendants' actions in restricting this material. Plaintiff's acknowledged sexual interest in the subject matter of the photos triggers the application of the regulatory restrictions on these materials and forms the basis for the action taken by Defendants. The assorted opposition(s) raised by Plaintiff lacks merit. The alleged access to such material at other institutions is neither proven no relevant to this determination.

Finally, as to the photos at issue – the subject of many of Plaintiff's filings – the Court finds production of these photos is not essential for the Court's determination as the parties are not disputing the subject matter of the photos or the nature of Plaintiff's interest in such photos. There is no contention here that these photos are "art" or the subject of "academic research" or any other application that might take them outside the application of the regulations at issue. Determination of Defendants' motion for summary judgment does not require such a strained view of the facts before the Court.

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IV. CONCLUSION

Based on the foregoing, the undersigned recommends as follows:

1. Defendants' motion for summary judgment, ECF No. 63, be GRANTED.

2. Plaintiff's motion for summary judgment, ECF No. 47, be DENIED.

3. All remaining pending motions, ECF Nos. 28, 35, 40, 41, 65, and 69, be DENIED as moot.

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)(l). 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: July 25, 2023

DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE