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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MALCOLM RAY ROSS,
Plaintiff,
v.
CDCR, et al.,
Defendants.

Case No. 2:23-cv-01920-KJM-JDP (PC)

ORDER

Plaintiff, a former 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 December 12, 2023, the magistrate judge filed findings and recommendations, 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. Plaintiff has not filed objections to the findings and recommendations.

The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s conclusions of law are reviewed de novo. *See Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) (“[D]eterminations of law by the magistrate judge are reviewed de novo by both the district court and [the appellate] court

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1 . . .”). Having reviewed the file, the court finds the findings and recommendations to be
2 supported by the record and by the proper analysis, except for the recommendation of dismissal
3 without leave to amend. Therefore, the court adopts the findings and recommendations with one
4 modification: the court dismisses the case with leave to amend one more time. *Akhtar v. Mesa*,
5 698 F.3d 1202, 1212 (9th Cir. 2012) (“A district court should not dismiss a pro se complaint
6 without leave to amend unless ‘it is absolutely clear that the deficiencies of the complaint could
7 not be cured by amendment.’”).

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The findings and recommendations filed December 12, 2023, ECF No. 14, are adopted
10 in part;
- 11 2. This action is dismissed for failure to state a claim, with leave to amend one more time;
- 12 3. Any amended complaint shall be filed within 30 days of the date of service of this
13 order; and
- 14 4. This matter is referred back to the assigned magistrate judge for all further pretrial
15 proceedings consistent with this order.

16 DATED: February 5, 2024.

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20 CHIEF UNITED STATES DISTRICT JUDGE
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