UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SAM DRAKE, Plaintiff, v. MCCOMAS, *et al.*, Defendants.	No. 1:22-cv-1149 JLT BAM (PC) ORDER ADOPTING FINDINGS AND RECOMMENDATIONS AND DISMISSING CERTAIN CLAIMS (Doc. 38)

Sam Drake is a pretrial detainee proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. The assigned magistrate judge screened Plaintiff's second amended complaint and found Plaintiff stated a cognizable claim for: (1) violation of the First Amendment based on a facial challenge to FCJ Policy #E-120 and #E-410 against Defendants Mims, McComas, and Zanoni; (2) violation of the First Amendment based on an as-applied challenge to FCJ Policy #E-120 and #E-410 against Enriquez, Keoniyom, Nichols, and Snyder; and (3) for violation of Due Process against officers who returned Plaintiff's mail, Enriquez, Keoniyom, Nichols, and Snyder. (Doc. 38 at 9-14.) The magistrate judge found these were the only cognizable claims and recommended that to the extent Plaintiff sought to raise any other claims, they be dismissed for failure to state a claim. (*Id.* at 15.)

The Court served the Findings and Recommendations on the parties and notified Plaintiff that any objections were due within 14 days. (Doc. 38 at 15.) The Court advised Plaintiff that the

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failure to file objections within the specified time may result in the waiver of rights on appeal. (*Id.*, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014).) Neither Plaintiff nor Defendants filed objections, and the time to do so has passed.

According to 28 U.S.C. § 636(b)(1)(C), this Court performed a *de novo* review of this case. Having carefully reviewed the matter, the Court concludes the Findings and Recommendations are supported by the record and proper analysis. Thus, the Court **ORDERS**:

1. The Findings and Recommendations issued on February 20, 2024 (Doc. 38) are **ADOPTED** in full.
2. This action **SHALL** proceed on Plaintiff's second amended complaint, filed November 2, 2023 (Doc. 37), only on the following claims:
   a. violation of the First Amendment based on a facial challenge to FCJ Policy #E-120 and #E-410 against Defendants Mims, McComas, and Zanoni;
   b. violation of the First Amendment based on an as-applied challenge to FCJ Policy #E-120 and #E-410 against Defendants Enriquez, Keoniyom, Nichols, and Snyder; and
   c. violation of Due Process for returning Plaintiff's mail against Defendants Enriquez, Keoniyom, Nichols, and Snyder.
3. All other claims are **DISMISSED** from this action for failure to state a claim upon which relief may be granted.

IT IS SO ORDERED.

Dated: **March 25, 2024**

Jennifer L. Thurston
UNITED STATES DISTRICT JUDGE