

APPENDIX "A"

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARTHUER RAY DEERE, Sr.,
Plaintiff,
v.
JOE LIZARRAGA, et al.,
Defendants.

No. 2:16-cv-1694 MCE DB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se. On April 8, 2016, he filed this civil rights action under 42 U.S.C. § 1983. In a screening order filed March 28, 2017, this court dismissed plaintiff's claims against the Prison Law Office. (ECF No. 12.) This case then proceeded on plaintiff's claims in his second amended complaint against defendant Lizarraga. (See ECF No. 19.) On August 19, 2019, the court granted defendant's motion for summary judgment. (ECF No. 74.)

Plaintiff filed an appeal. The Court of Appeals vacated this court's order dismissing plaintiff's claims against the Prison Law Office based on its decision in Williams v. King, 875 F.3d 500, 503-04 (9th Cir. 2017). (ECF No. 79.)

In Williams, issued November 9, 2017, the Court of Appeals held that a magistrate judge lacked jurisdiction to dismiss a prisoner's case for failure to state a claim at the screening stage where the plaintiff had consented to magistrate judge jurisdiction and defendants had not yet been

1 served. Williams, 875 F.3d at 503-04. Specifically, the Ninth Circuit held that “28 U.S.C. §
2 636(c)(1) requires the consent of all plaintiffs and defendants named in the complaint—
3 irrespective of service of process—before jurisdiction may vest in a magistrate judge to hear and
4 decide a civil case that a district court would otherwise hear.” Id. at 501.

5 Here, defendants were not served at the time this court issued its order dismissing
6 plaintiff’s claims against the Prison Law Office. Accordingly, the undersigned magistrate judge
7 lacked jurisdiction to make that determination based solely on plaintiff’s consent.

8 In light of the holding in Williams and the Court of Appeals’ remand, this court will
9 recommend to the assigned district judge that he dismiss plaintiff’s claims against the Prison Law
10 Office for the reasons set forth in the March 28, 2017 order.

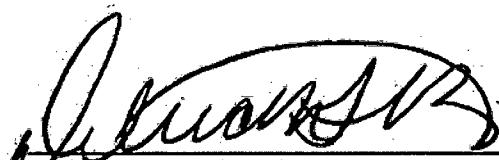
11 Accordingly, IT IS HEREBY RECOMMENDED that:

12 1. Plaintiff’s claims against the Prison Law Office be dismissed without leave to amend;
13 and

14 2. Judgment be entered pursuant to the August 19, 2019 order.

15 These findings and recommendations will be submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty days after
17 being served with these findings and recommendations, either party may file written objections
18 with the court. The document should be captioned “Objections to Magistrate Judge’s Findings
19 and Recommendations.” The parties are advised that failure to file objections within the specified
20 time may result in waiver of the right to appeal the district court’s order. Martinez v. Ylst, 951
21 F.2d 1153 (9th Cir. 1991).

22 Dated: November 5, 2020



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25 DEBORAH BARNES
26 UNITED STATES MAGISTRATE JUDGE
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DLB:9/DLB1/prisoner-civil rights/deer1694.remand fr

APPENDIX "B"

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APPENDIX "B" JUST RECEIVED ON 03/20/2023
NOTICE RECEIVED THE SUMMARY JUDGMENT FROM THE DC

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 20 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ARTHUR RAY DEERE Sr.,

No. 21-15937

Plaintiff-Appellant,

D.C. No. 2:16-cv-01694-MCE-DB

v.

CDC EMPLOYEES; PRISON LAW
OFFICE; JOE A. LIZARRAGA, Warden,

MEMORANDUM*

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England Jr., District Judge, Presiding

Submitted March 14, 2023**

Before: SILVERMAN, SUNG, and SANCHEZ, Circuit Judges.

California state prisoner Arthur Ray Deere Sr. appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his safety. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

APPENDIX "C"

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARTHUR RAY DEERE, Sr.,

No. 2:16-cv-1694 MCE DB P

Plaintiff,

ORDER

v.

JOE LIZARRAGA, et al.,
Defendants.

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 November 5, 2020, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within thirty days. Plaintiff has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the findings and recommendations to be supported by the record and by proper analysis.

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1 Accordingly, IT IS HEREBY ORDERED that:

2 1. The findings and recommendations filed November 5, 2020, are ADOPTED in full;

3 2. Plaintiff's claims against the Prison Law Office are DISMISSED without leave to

4 amend; and

5 3. Judgment is entered pursuant to the August 19, 2019 order.

6 IT IS SO ORDERED.

7 Dated: March 17, 2021


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9 MORRISON C. ENGLAND, JR.
10 SENIOR UNITED STATES DISTRICT JUDGE
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**Additional material
from this filing is
available in the
Clerk's Office.**