

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

McCaa v. FCI-Herlong

McCaa · No. 2:24-cv-1191-DAD-CKD P · Decided May 12, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 CEDRIGUEZ MCCA, No. 2:24-cv-1191-DAD-CKD P 12 Plaintiff,
ORDER VACATING FINDINGS AND RECOMMENDATIONS 13 v. AND 14 FCI-HERLONG,
et al., AMENDED FINDINGS & 15 Defendants. RECOMMENDATIONS 16 17 18 Plaintiff is a
federal prisoner proceeding in forma pauperis and without counsel with a 19 civil rights action
pursuant to 42 U.S.C. § 1983.

On February 7, 2025, the undersigned screened 20 plaintiff's original complaint filed in this action
as required by 28 U.S.C. § 1915A(a) and 21 determined plaintiff stated a deliberate indifference
claim against defendant Allred and no other 22 claims. (ECF No. 13.) Plaintiff was ordered to
notify the court whether plaintiff elected to 23 proceed on the complaint as screened or file an
amended complaint.

(Id. at 5-7.) Plaintiff did not 24 file an amended complaint and failed to respond to that order
within the time granted. 25 Accordingly, on April 9, 2025, the undersigned recommended this
action be dismissed without 26 prejudice for failure to prosecute. (ECF No. 15.) 27 Subsequently,
plaintiff filed a document captioned "Extension of Time..." in which 28 plaintiff objects to the
findings and recommendations filed on April 9, 2025.

(ECF No. 16.) 1 || Plaintiff also requests a 60-day extension of time to prepare a supplemental
brief with "added 2 || findings to prosecute respondents" for various violations of plaintiff's rights.
(Id. at 1.) 3 Based on plaintiff's objection to the dismissal of this case for failure to prosecute, the 4
|| undersigned will vacate the recommendation to dismiss on that ground.

Plaintiff's request for an 5 || extension of time to file a supplemental brief will be denied as
unnecessary because there is no 6 || issue before the court in need of supplemental briefing. For
the reasons stated in the February 7, 7 || 2025, screening order, the undersigned will recommend
this case proceed solely on plaintiff's 8 | deliberate indifference claim against defendant Allred and
that all other claims and defendants be 9 || dismissed without leave to amend for failure to state a
claim.

10 In accordance with the above, IT IS ORDERED as follows: 11 1. The findings and
recommendations filed on April 9, 2025 (ECF No. 15) are 12 VACATED. 13 2. Plaintiffs motion

for an extension of time to file supplemental briefing (ECF No. 16) 14 is DENIED as unnecessary. 15 In addition, IT IS RECOMMENDED that this case proceed on a deliberate indifference 16 || claim against defendant Allred and that all other claims and defendants be dismissed without 17 || leave to amend for failure to state a claim.

18 These findings and recommendations are submitted to the United States District Judge 19 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 20 || after being served with these findings and recommendations, plaintiff may file written objections 21 || with the court and serve a copy on all parties. Such a document should be captioned “Objections 22 || to Magistrate Judge’s Findings and Recommendations.” Any response to the objections shall be 23 || filed and served within fourteen days after service of the objections.

The parties are advised that 24 || failure to file objections within the specified time may waive the right to appeal the District 25 || Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). 26 | Dated: May 9, 2025 □□ / dp ai 27 CAROLYN K DELANEY ag | Smet bxacteamnd UNITED STATES MAGISTRATE JUDGE