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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHANNON L. AVERY, SR.,

1:07-cv-01175-OWW-GSA-PC

Plaintiff,

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(Doc. 75.)

v.

CDCR DIRECTOR, et al.,

Defendants.

ORDER FOR THIS ACTION TO PROCEED ON THE
SECOND AMENDED COMPLAINT AGAINST
DEFENDANT AMAYA FOR RETALIATION,
DEFENDANT GONZALES FOR INADEQUATE
MEDICAL CARE AND FAILURE TO PROTECT,
DEFENDANT BASCOM FOR EXCESSIVE FORCE,
AND ON PLAINTIFF'S RELATED STATE TORT
CLAIMS, AND DISMISSING ALL OTHER CLAIMS
AND DEFENDANTS FOR FAILURE TO STATE A
CLAIM
(Doc. 69.)

_____ /

Shannon L. Avery. Sr. ("Plaintiff") is a former state prisoner proceeding pro se in this civil rights action pursuant to 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 April 14, 2011, findings and recommendations were entered, recommending that this action proceed on the Second Amended Complaint against defendant Amaya for retaliation, defendant Gonzales for inadequate medical care and failure to protect, defendant Bascom for excessive force, and on Plaintiff's related state tort claims, and that all other claims be dismissed for failure to state a claim. Plaintiff was provided an opportunity to file objections to the findings and

1 recommendations within thirty days. To date, Plaintiff has not filed objections or otherwise
2 responded to the findings and recommendations.

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

6 Accordingly, THE COURT HEREBY ORDERS that:

- 7 1. The Findings and Recommendations issued by the Magistrate Judge on April 14,
8 2011, are adopted in full;
- 9 2. This action now proceeds with the Second Amended Complaint filed on July 20,
10 2010, on the claims found cognizable by the Court against defendant C/O J. Amaya
11 for retaliation under the First Amendment; against defendant C/O G. Gonzales for
12 inadequate medical care and for failure to protect Plaintiff, in violation of the Eighth
13 Amendment; against defendant C/O Bascom for use of excessive force in violation
14 of the Eighth Amendment, assault, and battery; and on Plaintiff's related state tort
15 claims;
- 16 3. This action now proceeds for money damages only as relief;
- 17 4. All remaining claims and defendants are dismissed from this action based on
18 Plaintiff's failure to state a claim upon which relief may be granted under § 1983;
- 19 5. Plaintiff's claims for supervisory liability, conspiracy, verbal harassment, failure to
20 intercede, due process, mayhem, for staring at Plaintiff, and for withholding water
21 from Plaintiff, are dismissed from this action based on Plaintiff's failure to state a
22 claim upon which relief may be granted under § 1983;
- 23 6. Defendants Hubbard, Mendoza-Powers, Ndoh, Pennywell, Lu, Kaur, Suryadevara,
24 Alfaro, McGraw, Ramos, Weinstein, and Hill are dismissed from this action based
25 on Plaintiff's failure to state any claims upon which relief may be granted against
26 them under § 1983; and

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7. The Clerk is directed to reflect on the Court's docket:

- (1) the dismissal of defendants Director of CDCR, Ramos, Alfaro, McGraw, Pennywell, Summers, Mendoza-Powers, Kaur, Suryadevara, and Lu from this action; and
- (2) the addition of defendant Bascom to this action.

IT IS SO ORDERED.

Dated: June 8, 2011

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE