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

WILLIAM SUTHERLAND,

1:09-cv-02152-LJO-GSA-PC

Plaintiff,

ORDER ADOPTING FINDINGS  
AND RECOMMENDATIONS  
(Doc. 17.)

vs.

A. FERNANDO, et al.,

ORDER FOR THIS ACTION TO PROCEED ON  
THE FIRST AMENDED COMPLAINT AGAINST  
DEFENDANTS FERNANDO AND JERICOFF FOR  
USE OF EXCESSIVE FORCE AND AGAINST  
DEFENDANT YATES FOR FAILURE TO  
PROTECT PLAINTIFF, AND ON PLAINTIFF'S  
RELATED STATE TORT CLAIMS, AND  
DISMISSING ALL OTHER CLAIMS AND  
DEFENDANTS FOR FAILURE TO STATE A  
CLAIM

Defendants.

ORDER REFERRING CASE BACK TO  
MAGISTRATE JUDGE FOR FURTHER  
PROCEEDINGS

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William Sutherland (“plaintiff”) is a 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 28, 2011, findings and recommendations were entered, recommending that this action proceed with the First Amended Complaint filed on December 6, 2010, on Plaintiff’s Eighth Amendment claims found cognizable by the Court against defendants C/O A. Fernando and C/O M. Jericoff for use of excessive force and against defendant Warden James Yates for failure to protect Plaintiff; and on Plaintiff’s related state tort claims; and that all remaining claims and defendants be dismissed, based on Plaintiff’s failure to state a claim. (Doc. 17.) Plaintiff was provided an opportunity to file objections to the findings and recommendations within thirty days. To date, plaintiff has not filed objections or otherwise responded to the findings and recommendations.

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

4 Accordingly, THE COURT HEREBY ORDERS that:

- 5 1. The Findings and Recommendations issued by the Magistrate Judge on April  
6 28, 2011, are ADOPTED in full;
- 7 2. This action now PROCEEDS with the First Amended Complaint filed on  
8 December 6, 2010, on Plaintiff's Eighth Amendment claims found  
9 cognizable by the Court against defendants C/O A. Fernando and C/O M.  
10 Jericoff for use of excessive force and against defendant Warden James  
11 Yates for failure to protect Plaintiff; and on Plaintiff's related state tort  
12 claims;
- 13 3. All remaining claims and defendants are DISMISSED based on Plaintiff's  
14 failure to state a claim upon which relief may be granted under § 1983;
- 15 4. Plaintiff's claims for conspiracy, due process violations, and violations of the  
16 Penal Code are DISMISSED from this action based on Plaintiff's failure to  
17 state a claim upon which relief may be granted under § 1983;
- 18 5. Defendant Lieutenant R. Lantz is DISMISSED from this action based on  
19 Plaintiff's failure to state any claims upon which relief may be granted  
20 against him under § 1983; and
- 21 6 This action is REFERRED back to the Magistrate Judge for further  
22 proceedings, including initiation of service.

23 IT IS SO ORDERED.

24 **Dated: June 16, 2011**

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE