

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES S. ALEXANDER,
Plaintiff,
v.
SOLANO COUNTY DETENTION
FACILITY, et al.,
Defendants.

No. 2:13-cv-2566 GEB CKD P

ORDER

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 June 3, 2015, 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 fourteen days. Defendant Connors 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. In brief: In his motion for summary judgment, defendant Connors relied on deemed admissions by plaintiff, including ultimate-issue admissions that (1) plaintiff had no facts to support his claim and (2) defendant did not use excessive force.

1 (See ECF No. 48 at 6.) Although plaintiff did not show good cause for failing to respond to
2 defendant's RFAs, the magistrate judge allowed him to withdraw his deemed admissions and,
3 based on the resulting factual dispute, recommended that summary judgment for defendant be
4 denied. (ECF No. 52.)

5 In his objections, defendant argues that he was entitled to rely on the deemed admissions,
6 and in such reliance, "made the prudent choice not to pursue further discovery or file a motion to
7 compel responses" to his other discovery requests, all of which plaintiff ignored. (ECF No. 53 at
8 4.) Indeed, the deadline for filing a discovery motion passed without defendant's attempting to
9 obtain any discovery responses from plaintiff. (See ECF No. 19.)

10 Courts in this district have made clear that deciding a summary judgment motion based on
11 ultimate-issue deemed admissions by a pro se inmate litigant, is disfavored. (See ECF No. 48 at
12 8.) Yet rather than pursue discovery as to the merits of plaintiff's case, defendant opted to rely on
13 such admissions. He now asks that plaintiff be compelled – absent a timely motion to compel –
14 to provide additional discovery responses, so that defendant may renew his summary judgment
15 motion in light of plaintiff's responses.

16 Having carefully reviewed the entire file, the court finds the findings and
17 recommendations to be supported by the record and by proper analysis. However, the court will
18 deny defendant's motion for summary judgment without prejudice to renewal and direct the
19 magistrate judge to set a further discovery schedule in this action, so that summary judgment may
20 be litigated on the merits.

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. The findings and recommendations filed June 3, 2015 are adopted in full;
- 23 2. Defendant's motion for summary judgment (ECF No. 22) is denied without prejudice
24 to renewal; and

25 ///

26 ///

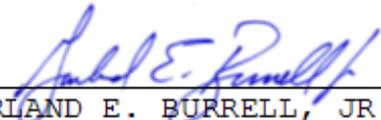
27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Good cause appearing, the assigned magistrate judge is directed to set a further discovery and dispositive motion schedule in this action.

Dated: July 2, 2015



GARLAND E. BURRELL, JR.
Senior United States District Judge