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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT D. GIBSON,

CASE NO. 1:03-CV-5445 OWW DLB-PC

Plaintiff,

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, AND DENYING IN
PART AND GRANTING IN PART
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT

v.

BEER, et al.,

Defendants.

(Doc. 322)

Plaintiff Robert D. Gibson, a state prisoner proceeding pro se and in forma pauperis, 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 72-302.

On November 24, 2008, the Magistrate Judge filed a [Findings and Recommendations](#) herein which was served on the parties and which contained notice to the parties that any objections to the Findings and Recommendations were to be filed within thirty days. The parties have not filed timely objections to the Findings and Recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), 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.

Accordingly, IT IS HEREBY ORDERED that:

1. The [Findings and Recommendations](#), filed November 24, 2008, is adopted in full;
2. Defendant Gonzales' and Defendant Hayward's motion for summary adjudication on plaintiff's excessive force claim against them is DENIED;

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- 3. Defendant Gonzales' and Defendant Hayward's motion for summary adjudication on plaintiff's retaliation claim against them is GRANTED;
- 4. Defendant Beer's motion for summary adjudication on plaintiff's retaliation claim against him is DENIED; and
- 5. This matter shall be set for trial on plaintiff's claims against defendants Gonzales, Hayward and Beer of excessive force, in violation of the Eighth Amendment, and against defendant Beer on plaintiff's claim of retaliation in violation of the First Amendment.

IT IS SO ORDERED.

Dated: January 21, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE