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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

CARLOS HENDON,

Plaintiff,

v.

REED, et al.,

Defendants.

CASE NO. 1:05-cv-00790-OWW-SKO PC

ORDER VACATING FINDINGS AND  
RECOMMENDATIONS, AND REFERRING  
MATTER BACK TO MAGISTRATE JUDGE

(ECF No. 42)

ORDER DEEMING DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT VACATED  
FROM THE COURT'S CALENDAR PENDING  
FURTHER PROCEEDINGS

(ECF No. 36)

Plaintiff Carlos Hendon ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on the [second amended complaint](#), filed February 25, 2008, against Defendants Lopez, Granillo, and Julie B. ("Defendants") for violation of the Eighth Amendment. 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 July 9, 2010, Defendants filed a [motion for summary judgment](#). Plaintiff filed an [opposition](#) on August 2, 2010. The Magistrate Judge issued [findings and recommendations](#) on January 31, 2011, recommending that Defendants' motion for summary judgment be granted. The parties were given thirty days to file objections and no objections were filed.

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 vacates the findings

1 and recommendations. The Court has reviewed the second amended complaint and although  
2 Defendants' summary judgment motion frames Plaintiff's claim as one for excessive force without  
3 objection from Plaintiff, the Court finds that the claim in this action may be more appropriately  
4 analyzed as one for unconstitutional conditions of confinement, which entails review under a  
5 different legal standard.

6 Accordingly, the Court refers this action back to the Magistrate Judge for further review of  
7 the second amended complaint and Defendants' motion for summary judgment. To the extent  
8 appropriate, the Magistrate Judge shall issue new findings and recommendations and/or orders. In  
9 light of 28 U.S.C. § 476(a)(1), the Civil Justice Reform Act, Defendants' motion for summary  
10 judgment shall be deemed vacated from the Court's calendar pending resolution of the issues raised  
11 in this order.<sup>1</sup>

12 Accordingly, it is HEREBY ORDERED that:

- 13 1. The findings and recommendations, filed January 31, 2011, are VACATED;
- 14 2. The action is REFERRED BACK to the Magistrate Judge for further proceedings  
15 consistent with this order; and
- 16 3. Defendants' motion for summary judgment is DEEMED VACATED from the  
17 Court's calendar pending resolution of the issues raised in this order.

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19 IT IS SO ORDERED.

20 **Dated: March 21, 2011**

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE

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28 <sup>1</sup> The Court's action is purely administrative and the parties need take no further action. The Court will  
issue a ruling on Defendants' pending motion for summary judgment following resolution by the Magistrate Judge of  
the issues raised in this order.