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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DESHA M. CARTER,
Plaintiff,

v.

S. BUTLER, et al.,
Defendants.

CASE NO. 1:05-cv-01057 LJO DLB PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, ORDER DENYING
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT, AND ORDER DENYING
PLAINTIFF'S MOTION FOR JUDGMENT AS
A MATTER OF LAW

(Doc. 52)

Plaintiff Desha Carter, 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 72-302.

On July 14, 2009, 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.

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The [Findings and Recommendations](#), filed July 14, 2009, is adopted in full;
- 3 2. Those portions of Defendants' motion for summary judgment not ordered withdrawn
- 4 pursuant to the July 14, 2009 order are DENIED;
- 5 3. Plaintiff's motion for judgment on the pleadings and/or judgment as a matter of law
- 6 is DENIED; and
- 7 4. This action shall proceed to trial on Plaintiff's claim of excessive force against
- 8 defendant Butler in violation of the Eighth Amendment, and Plaintiff's claim for
- 9 violation of due process against defendant Rousseau.

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11 IT IS SO ORDERED.

12 Dated: August 25, 2009

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