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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MAUWAI FARHA,

Plaintiff,

v.

B. SILVA, et al.,

Defendants.

CASE NO. 1:06-cv-00755-OWW-SMS PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND PARTIALLY
GRANTING DEFENDANTS’ MOTION FOR
SUMMARY JUDGMENT

(ECF Nos. 79, 87)

Plaintiff Mauwai Farha (“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 [first amended complaint](#), filed April 23, 2009, against Defendants B. Silva, V. Pierce, Banks, Wimply, Williams, Riddle, and John Doe for violations of the Eighth Amendment.¹ 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 September 16, 2010, Defendants Banks, Pierce, Riddle, B. Silva, Williams, and Wimply filed a [motion for summary judgment](#). Plaintiff filed an [opposition](#) on February 3, 2011, and Defendant filed a [reply](#) on February 10, 2011. On February 16, 2011, the Magistrate Judge issued [findings and recommendations](#) recommending that Defendant’s motion for summary judgment be granted in part and denied in part. The parties were given twenty one days in which to file objections

¹On September 16, 2010, an order was issued dismissing Defendant Swain from the action pursuant to Federal Rule of Civil Procedure 4(m) for lack of service. (ECF No. 78.) Plaintiff has not filed an amended complaint identifying John Doe. On March 28, 2011, an order to show cause as to why Doe Defendant should not be dismissed for failure to effect service of process was issued.

1 and no objections have been filed.

2 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
3 de novo review of this case. Having carefully reviewed the entire file, the undersigned finds the
4 findings and recommendations to be supported by the record and by proper analysis with the
5 following limitations. The Magistrate Judge screened the complaint and found a cognizable equal
6 protection claim, which Defendants did not address in their motion for summary judgment. The
7 action will be referred back to the Magistrate Judge to re-screen the equal protection claim in light
8 of the holding in Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Also, since Defendant Swain has
9 been dismissed from this action there are no claims proceeding against him.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The findings and recommendations, filed February 16, 2011, are adopted in full, with
12 the modification addressed;
- 13 2. Defendant's motion for summary adjudication is GRANTED in part and DENIED
14 in part as follows:
 - 15 a. Defendants' motion for summary adjudication for deliberate indifference to
16 medical needs in violation of the Eighth Amendment is GRANTED for
17 Defendants Silva, Banks, and Pierce;
 - 18 b. Defendants' remaining motions for summary adjudication are DENIED;
- 19 3. Plaintiff's excessive force claim arising from the alleged handcuffing incident is
20 DISMISSED for failure to state a claim;
- 21 4. This action shall proceed on:
 - 22 a. Plaintiff's Eighth Amendment claims against Defendants Banks and Pierce
23 for placing Plaintiff in a holding cell, ordering him to strip naked, and
24 ridiculing him;
 - 25 b. Plaintiff's Eighth Amendment claims against Defendants Wimply, Williams,
26 and Riddle for use of excessive force;
 - 27 c. Plaintiff's Eighth Amendment claims against Defendants Wimply, Williams,
28 and Riddle for deliberate indifference to Plaintiff's medical needs during his

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asthma attack;

d. Plaintiff's Fourteenth Amendment equal protection claims against Defendants Banks, Pierce, Wimby, Williams, and Riddle; and

5. This action if referred back to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

Dated: April 8, 2011

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE