

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
EASTERN DISTRICT OF CALIFORNIA

GARY ANDRE LACY,
Plaintiff,
vs.
H. TYSON, et al.,
Defendants.

1:07-cv-00381-LJO-GSA-PC
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(ECF No. 160.)
ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
AMENDED MOTION FOR SUMMARY
JUDGMENT
(ECF No. 121.)
ORDER DENYING DEFENDANTS'
MOTION FOR QUALIFIED IMMUNITY
ORDER FOR THIS CASE TO PROCEED
AGAINST DEFENDANTS PEACOCK AND
TYSON FOR FAILURE TO PROTECT
PLAINTIFF, AND AGAINST
DEFENDANTS T. REYNA, CORREA,
BREMNER, AND BROOKWALTER FOR
USE OF EXCESSIVE FORCE

Gary Andre Lacy ("Plaintiff") is a former state prisoner proceeding *pro se* with this civil rights action pursuant to 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.

1 On January 6, 2016, findings and recommendations were entered, recommending that
2 Defendants' amended motion for summary judgment be granted in part and denied in part.
3 (ECF No. 160.) The parties were granted thirty days in which to file objections to the findings
4 and recommendations. (Id.) The thirty day time period has passed, and no objections have
5 been filed.

6 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this
7 Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file,
8 the Court finds the findings and recommendations to be supported by the record and proper
9 analysis.

10 Accordingly, THE COURT HEREBY ORDERS that:

- 11 1. The Findings and Recommendations issued by the Magistrate Judge on January
12 6, 2016, are ADOPTED IN FULL;
- 13 2. Defendants' amended motion for summary judgment, filed on June 29, 2012, is
14 GRANTED in part and DENIED in part;
- 15 3. Defendants are GRANTED summary judgment as to Plaintiff's excessive force
16 claims against Defendant Peacock, and Plaintiff's medical claims against
17 Defendants Bremnar, Brookwalter, Peacock, Tyson, Aspeitia-Fleming, and
18 Patel;
- 19 4. Defendants are DENIED summary judgment as to Plaintiff's claims that
20 Defendants Peacock and Tyson failed to protect him, and Plaintiff's excessive
21 force claims against Defendants T. Reyna, Correa, Bremnar, and Brookwalter;
- 22 5. Defendants' motion for qualified immunity, for Plaintiff's claims at issue
23 against them, is DENIED;
- 24 6. This case now proceeds against Defendants Peacock and Tyson for failure to
25 protect Plaintiff, and against Defendants T. Reyna, Correa, Bremnar, and
26 Brookwalter for use of excessive force;

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

7. The Clerk of Court is instructed to enter judgment in favor of Defendants Aspeitia-Fleming and Patel, and to reflect their termination from this case on the docket; and

8. This case is referred back to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

Dated: February 22, 2016

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