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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JESSE MOTEN,

Plaintiff,

v.

DERREL G. ADAMS, et al.,

Defendants.

CASE NO. 1:07-cv-924-AWI-MJS (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
CLAIMS AGAINST ALL DEFENDANTS
OTHER THAN J. GONZALES

(ECF Nos. 55, 56, 57 & 58)

Plaintiff Jesse Moten, 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 302.

On March 17, 2011, the Magistrate Judge filed a Findings and Recommendation recommending that all Defendants other than J. Gonzales be dismissed from this action. The Magistrate Judge screened Plaintiff’s Second Amended Complaint, filed on March 11, 2011, and found that Plaintiff had stated a cognizable claim for use of excessive force against Defendant Gonzales but had failed to state a claim in all other respects and against all other Defendants. Plaintiff has filed objections to the Findings and Recommendation arguing that he stated a claim in other respects as well.

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. Contrary to Plaintiff’s allegations in the objections, the Magistrate Judge correctly screened the complaint pursuant to 28

1 U.S.C. § 1915A. To the extent Plaintiff know is trying to bring additional facts to the court's
2 attention by submitting an affidavit along with his objections, Plaintiff has been given numerous
3 opportunities to amend his complaint and state a claim and no further amendment will be given at
4 this time. See Lopez v. Smith, 203 F.3d 1122 (9th Cir. 2000) (if court determines that complaint
5 fails to state claim, leave to amend should be granted once to extent that complaint's deficiencies can
6 be cured).

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The Findings and Recommendations, filed March 17, 2011, is adopted;
- 9 2. Plaintiff has stated a cognizable claim against Defendant J. Gonzales for use of
10 excessive force in violation of the Eighth Amendment and such claim remains
11 pending in this action;
- 12 3. All other claims brought in Plaintiff's Second Amended Complaint are DISMISSED
13 WITH PREJUDICE for failure to state a claim upon which relief can be granted;
- 14 4. All Defendants other than J. Gonzales are DISMISSED as party-Defendants in this
15 action;
- 16 5. Service shall be ordered on Defendant J. Gonzales.

17 IT IS SO ORDERED.

18 Dated: May 17, 2011

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21 CHIEF UNITED STATES DISTRICT JUDGE
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