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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CARL L. HIGGINS,

Plaintiff,

v.

J. MEDINA, et al.,

Defendants.

CASE NO. 1:07-cv-00934-LJO-GSA PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
CERTAIN CLAIMS AND DEFENDANTS,
AND REFERRING MATTER BACK TO
MAGISTRATE JUDGE TO INITIATE
SERVICE OF PROCESS

(Docs. 16 and 19)

Plaintiff Carl L. Higgins is a state prisoner proceeding pro se and in forma pauperis in 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 72-302.

On October 8, 2009, the Magistrate Judge screened Plaintiff's [Second Amended Complaint](#), and issued a [Findings and Recommendations](#) recommending dismissal of certain claims and defendants from this action. After obtaining an extension of time, Plaintiff filed a timely [Objection](#) on December 7, 2009.

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.

Accordingly, IT IS HEREBY ORDERED that:

- 1. The Findings and Recommendations, filed October 8, 2009, is adopted in full;

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- 2. This action shall proceed on Plaintiff's second amended complaint, filed March 16, 2009, against Defendants Williams, Lozano, Medina, and Miranda for use of excessive force, in violation of the Eighth Amendment;
- 3. Plaintiff's excessive force claim against Defendant Gibbs, conspiracy claim, due process claim arising from the falsification of reports, and claims against Defendants Reynoso and Jose are dismissed, with prejudice, for failure to state a claim;
- 4. Plaintiff's claim against Zanchi, Chapman, and Rhodes arising from his placement in BMU at CCI is dismissed without prejudice to being raised in a separate civil action;
- 5. Defendants Gibbs, Reynoso, Jose, Zanchi, Chapman, and Rhodes are dismissed from this action; and
- 6. This matter is referred back to the Magistrate Judge to initiate service of process.

IT IS SO ORDERED.

Dated: December 9, 2009

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