UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GARY H. BRUSH,

Plaintiff,

v.

J. HARPER, et al.,

Defendants.

/

CASE NO. 1:07-cv-01009-LJO-DLB-PC

ORDER ADOPTING FINDINGS AND RECOMMENDATIONS, AND DISMISSING CERTAIN DEFENDANTS AND CLAIMS FROM ACTION

(Doc. 74)

Plaintiff Gary H. Brush ("Plaintiff") is a state prisoner proceeding pro se 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 March 10, 2009, the Magistrate Judge filed a Findings and Recommendations herein which was served on Plaintiff, and which contained notice to Plaintiff that any objection to the Findings and Recommendations was to be filed within thirty days. Plaintiff filed an objection on May 19, 2009, after receiving an extension of time.

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, the Court HEREBY ORDERS that:

1. The Findings and Recommendations, filed on March 10, 2009, is adopted in full;
2. Defendants Freeland, Scott, Tucker, Soares, and Naftzger are DISMISSED from this action without prejudice;

3. Plaintiff's claim against defendant Lee for retaliation and failure to protect is DISMISSED without prejudice;

4. Plaintiff's claim against defendants Jasso, Rangel, Gonzales, and Cano for excessive force on March 16, 2006 is DISMISSED without prejudice; and

5. This action shall proceed only against defendants Jasso, Lee, Harper, Ortiz, King, and Cattallano for deliberate indifference in violation of the Eighth Amendment; defendants Rangel, Gonzales, Cano, and Greene for excessive force on September 14, 2006 in violation of the Eighth Amendment; and defendants Rangel, Gonzales, Cano, Greene, and Harper for retaliation in violation of the First Amendment.[1]

IT IS SO ORDERED.

Dated: July 15, 2009

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

[1] Defendant Watts has yet to appear in this action. By separate order, the Court is directing the United States Marshal to re-attempt service on Defendant Watts.