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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MONTE HANEY,

Plaintiff,

v.

RICHARD E. EARLY, et al.,

Defendants.

CASE NO. 1:07-cv-01104-AWI-SMS (PC)

ORDER ADOPTING FINDINGS AND RECOMMENDATIONS, DENYING DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF’S CLAIMS OF EXCESSIVE FORCE AND DENIAL OF EXERCISE UNDER THE EIGHTH AMENDMENT; RESERVING RULING ON PLAINTIFF’S CLAIMS UNDER THE EQUAL PROTECTION CLAUSE PENDING FURTHER DISCOVERY; and REFERRING CASE TO MAGISTRATE JUDGE TO REOPEN DISCOVERY

(Docs. 54, 89)

Plaintiff, Monte Haney (hereinafter “Plaintiff”) 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 302.

On March 19, 2012, the Magistrate Judge filed a Findings and Recommendations herein which was served on the parties and which contained notice to the parties that Objections were to be filed within ten days. (Doc. 89.) Both Plaintiff and Defendants filed timely objections. (Docs. 91, 92.)


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.

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The Findings and Recommendations, filed March 19, 2012, is adopted as follows;
- 3 2. Defendants' motion for summary judgment, filed June 21, 2011 (Doc. 54), as to
- 4 Plaintiff's claims under the Eighth Amendment against Defendants J.G. Oaks and D.
- 5 Silva for use of excessive force is DENIED;
- 6 3. Defendants' motion for summary judgment, filed June 21, 2011 (Doc. 54), as to
- 7 Plaintiff's claims under the Eighth Amendment against Defendants R. Botello, M.
- 8 Rickman, F. Oliver, G. Torres, and T. Cano for denial of exercise is DENIED;
- 9 4. The ruling on Defendant's motion for summary judgment as to Plaintiff's claims
- 10 under the Equal Protection Clause is RESERVED until further discovery is
- 11 conducted and a new opposition and reply are filed on that claim;
- 12 5. The case is referred back to the Magistrate Judge to re-open discovery and set a
- 13 schedule for discovery matters and the subsequent filing of a new opposition by
- 14 Plaintiff limited solely to Defendants' motion for summary judgment that remains
- 15 pending as to Plaintiff's claims under the Equal Protection Clause and reply thereto
- 16 by Defendants.

17 IT IS SO ORDERED.

18 Dated: November 28, 2012

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UNITED STATES DISTRICT JUDGE