

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

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

DAVID MADDOX,  
Plaintiff,

vs.

JAMES A. YATES, et al.,  
Defendants.

1:07-cv-01227-OWW-GSA-PC

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS ACTION  
PROCEED ONLY AGAINST DEFENDANTS  
BATTLE, LADD, AND VANG ON PLAINTIFF'S  
EIGHTH AMENDMENT EXCESSIVE FORCE  
CLAIMS, AND ALL OTHER CLAIMS AND  
DEFENDANTS BE DISMISSED

OBJECTIONS, IF ANY, DUE IN 30 DAYS

Plaintiff David Maddox ("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 case now proceeds on the original complaint filed by Plaintiff on August 23, 2007. (Doc. 1.) The complaint names James A. Yates (Warden), Sergeant John Doe, Correctional Officer ("C/O") A. Battle, and C/O C. Vang as defendants, and alleges claims for conspiracy, violation of Plaintiff's rights to Due Process, and excessive force under the Eighth Amendment.<sup>1</sup>

The Court screened Plaintiff's complaint pursuant to 28 U.S.C. § 1915A and found that it states cognizable claims for relief under section 1983 against defendants Battle, Doe, and Vang only, for

---

<sup>1</sup>On September 4, 2009, Plaintiff filed written notice identifying the Doe defendant as Sergeant Ladd. (Doc. 13.) In an order filed concurrently with this order, the Clerk was directed to replace the Doe defendant in this action with defendant Sergeant Ladd.

1 excessive force under the Eighth Amendment. On August 6, 2009, Plaintiff was given leave to either  
2 file a first amended complaint, or in the alternative, to notify the Court that he does not wish to file a first  
3 amended complaint and instead wishes to proceed only on the claims identified by the Court as  
4 viable/cognizable in the Court's order. (Doc. 12.) On September 4, 2009, Plaintiff filed written notice  
5 to the Court that he does not wish to file a first amended complaint and only wishes to proceed on the  
6 claims found cognizable by the Court. (Doc. 13.)

7 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 8 1. This action proceed only against defendants C/O A. Battle, Sergeant Ladd, and C/O C.  
9 Vang, for excessive force in violation of the Eighth Amendment;
- 10 2. All remaining claims and defendants be dismissed from this action;
- 11 3. Defendant James A. Yates be dismissed from this action based on Plaintiff's failure to  
12 state any claims upon which relief may be granted against him; and
- 13 4. Plaintiff's claims for conspiracy and violation of Due Process be dismissed from this  
14 action based on Plaintiff's failure to state a claim upon which relief may be granted under  
15 section 1983.

16 These Findings and Recommendations will be submitted to the United States District Judge  
17 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days  
18 after being served with these Findings and Recommendations, Plaintiff may file written objections with  
19 the Court. The document should be captioned "Objections to Magistrate Judge's Findings and  
20 Recommendations." Plaintiff is advised that failure to file objections within the specified time may  
21 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

22  
23 IT IS SO ORDERED.

24 **Dated: September 9, 2009**

**/s/ Gary S. Austin**  
UNITED STATES MAGISTRATE JUDGE