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

ESS'NN A. AUBERT,

1:07-cv-01629-LJO-GSA-PC

Plaintiff,

ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS
(Doc. 13.)

vs.

KEVIN ELIJAH, et al.,

ORDER FOR THIS ACTION TO PROCEED
ON PLAINTIFF'S EIGHTH AMENDMENT
CLAIM ONLY, AND DISMISSING PLAINTIFF'S
SUPERVISORY LIABILITY CLAIM

Defendants.

_____ /

Ess'nn A. Aubert ("plaintiff") is a 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 June 1, 2009, findings and recommendations were entered, recommending that this action proceed on plaintiff's Eighth Amendment claim only, and that plaintiff's supervisory liability claim be dismissed. Plaintiff was provided an opportunity to file objections to the findings and recommendations within thirty days. To date, plaintiff has not filed objections or otherwise responded to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 73-305, 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 proper analysis.

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Accordingly, THE COURT HEREBY ORDERS that:

1. The Findings and Recommendations issued by the Magistrate Judge on June 1, 2009, are adopted in full;

2. This action now proceeds on Plaintiff's complaint, filed November 8, 2007, only against Defendants Kevin Elijah and Mario Garcia for use of excessive physical force in violation of the Eighth Amendment;

3. Plaintiff's claim for relief against Defendant A. Hedgpeth for supervisory liability is dismissed, with prejudice, for failure to state a claim upon which relief may be granted under § 1983; and

4. The Clerk is directed to reflect on the docket the dismissal of Defendant Hedgpeth from this action.

IT IS SO ORDERED.

Dated: July 30, 2009

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