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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

EMELITO EXMUNDO

CASE NO. 1:07-cv-01714-AWI-GBC (PC)

Plaintiff,

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION
PROCEED ONLY AGAINST DEFENDANT
VOGEL FOR RETALIATION AND
EXCESSIVE FORCE AND ALL OTHER
CLAIMS AND DEFENDANTS BE
DISMISSED

v.

VELLA, et. al.,

Defendants.

/ OBJECTIONS, IF ANY, DUE IN 30 DAYS

Emelito Exmundo (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On November 21, 2007, Defendants removed the case to federal court. (Doc. 1). On December 15, 2008, Plaintiff filed the first amended complaint. (Doc. 20). On March 31, 2009, the action was consolidated with Case No. 1:06-cv-00205 by District Court order. (Doc. 21). On October 15, 2010, the action was reopened as a separate action. (Doc. 22). With leave from Court, on January 14, 2011, Plaintiff filed the second amended complaint. (Doc. 26). Pursuant to 28 U.S.C. § 1915A, the Court screen the second amended complaint on May 2, 2011, and found that Plaintiff only stated a cognizable claim against Defendant Vogel for retaliation under the First Amendment and excessive force under the Eighth Amendment. (Doc. 28). The Court ordered Plaintiff to either address the shortcomings of the complaint through amendment or to notify the Court of his willingness to proceed on the cognizable claims. (Doc. 28). On May 12, 2011, Plaintiff gave notice of his willingness to proceed on the cognizable retaliation and excessive force claims against Defendant Vogel. (Doc. 29).

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

- 2 1. This action proceed against Defendant Vogel for violation of Plaintiff's rights under
3 the Eighth Amendment for excessive force and First Amendment for retaliation; and
4 2. All remaining claims and defendants be dismissed from this action.
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6 These Findings and Recommendations will be submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
8 days after being served with these Findings and Recommendations, Plaintiff may file written
9 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
10 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
11 specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d
12 1153 (9th Cir. 1991).
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14 IT IS SO ORDERED.

15 Dated: May 18, 2011

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17 UNITED STATES MAGISTRATE JUDGE
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