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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

EMELITO EXMUNDO)	CASE NO. 1:07-cv-01714-AWI-GBC (PC)
)	
Plaintiff,)	ORDER ADOPTING FINDINGS AND
)	RECOMMENDATION
v.)	
)	ORDER FINDING THAT THIS ACTION
VELLA, et. al.,)	PROCEED AGAINST DEFENDANT VOGEL
)	FOR EXCESSIVE FORCE AND
Defendants.)	RETALIATION
_____)		(Doc. 30)

I. Procedural History

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). 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 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 Magistrate Judge ordered Plaintiff to either address the shortcomings of the complaint through

1 amendment or to notify the Court of his willingness to proceed on the cognizable claims. (Doc. 28).
2 On May 12, 2011, Plaintiff gave notice of his willingness to proceed on the cognizable retaliation
3 and excessive force claims against Defendant Vogel. (Doc. 29).

4 On May 18, 2011, the Magistrate Judge filed a Findings and Recommendations herein which
5 was served on Plaintiff and which contained notice that any objections to the Findings and
6 Recommendations were to be filed within thirty days. (Doc. 30). Plaintiff has not filed any
7 objections. In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted
8 a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings
9 and Recommendations to be supported by the record and by proper analysis.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The Findings and Recommendations filed on May 18, 2011, is adopted in full (Doc.
12 30);
- 13 2. This action proceed against Defendant Vogel for violation of Plaintiff's rights under
14 the Eighth Amendment for excessive force and First Amendment for retaliation; and
- 15 3. All remaining claims and defendants are dismissed from this action.

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17 IT IS SO ORDERED.

18 Dated: August 30, 2011

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21 CHIEF UNITED STATES DISTRICT JUDGE
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