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

JOSEPH DANNY PROPHET,

1:07-cv-01785-AWI-GSA-PC

Plaintiff,

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS IN PART
(Doc. 23.)

vs.

WARDEN CLARK, et al.,

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO AMEND
(Doc. 24.)

Defendants.

ORDER DIRECTING CLERK TO FILE
FOURTH AMENDED COMPLAINT
(Doc. 25.)

ORDER FOR THIS ACTION TO PROCEED
ON THE FOURTH AMENDED COMPLAINT,
ONLY AGAINST DEFENDANT QUEEN
FOR EXCESSIVE FORCE, AND DISMISSING
ALL OTHER CLAIMS AND DEFENDANTS
FOR FAILURE TO STATE A CLAIM

_____ /

Joseph Danny Prophet ("Plaintiff") is a state 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 302.

On October 15, 2010, [findings and recommendations](#) were entered, recommending that this action be dismissed based on Plaintiff's failure to state a claim upon which relief may be granted under § 1983. (Doc. 23.) On November 12, 2010, in lieu of filing objections to the findings

1 and recommendations, Plaintiff filed a [motion for leave to amend](#) the complaint and lodged a
2 [proposed Fourth Amended Complaint](#). (Docs. 24, 25.)

3 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304,
4 this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the
5 Court finds the findings and recommendations to be supported by the record and proper analysis.

6 The Court has reviewed the proposed Fourth Amended Complaint in light of
7 Plaintiff's motion for leave to amend. Plaintiff names only two defendants, Warden Clark and
8 Correctional Officer Queen, along with unidentified Doe defendants. (Doc. 25 at 2 ¶¶4-6.) With
9 regard to the Doe defendants, the Magistrate Judge found in the findings and recommendations that
10 Plaintiff failed to make any specific factual allegation in the Third Amended Complaint as to any
11 Doe defendant and the Doe defendants should therefore be dismissed, without leave to amend. (Doc.
12 23 at 11 ¶L.) Plaintiff has not cured this deficiency in the proposed Fourth Amended Complaint.
13 With regard to Plaintiff's claim of inadequate medical care, Plaintiff fails to allege any facts showing
14 deliberate indifference by defendants Queen or Clark, or by Dr. Perry who examined Plaintiff after
15 his alleged injuries. (Doc. 25 at ¶¶10-14.) With regard to Plaintiff's claim that Warden Clark's
16 policy requiring disabled inmates to "get down and lay on their stomach" during riot control was a
17 cause of his injuries, Plaintiff has alleged no facts about the nature of his disability or how
18 implementation of the policy plausibly caused injury to his knees. Nor has Plaintiff linked an act by
19 any defendant to his allegation that he spent two to three hours "down," exacerbating his knee injury.
20 At most, Plaintiff states a cognizable claim against defendant Queen for excessive force, based on
21 the allegation that Queen pulled his hands behind his back and handcuffed them in such a way that it
22 caused severe pain in Plaintiff's shoulders, resulting in the need for surgery after x-rays revealed
23 damage to his shoulders. (Doc. 25 at 3 ¶¶9-11.) Plaintiff will be allowed to proceed only on the
24 excessive force claim against defendant Queen.

25 Accordingly, THE COURT HEREBY ORDERS that:

- 26 1. The Findings and Recommendations issued by the Magistrate Judge on
27 October 15, 2010, are adopted in part;

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- 2. Plaintiff's motion for leave to amend the complaint, filed on November 12, 2010, is GRANTED;
- 3. The Clerk is DIRECTED to file the Fourth Amended Complaint which was lodged on November 12, 2010;
- 4. This action now proceeds on Plaintiff's Fourth Amended Complaint only against defendant Correctional Officer Queen on Plaintiff's claim for excessive force under the Eighth Amendment. All other claims and defendants are dismissed from this action based on Plaintiff's failure to state a claim; and
- 5. This action is referred back to the Magistrate Judge for further proceedings including service of process.

IT IS SO ORDERED.

Dated: December 16, 2010



CHIEF UNITED STATES DISTRICT JUDGE