

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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANIEL R. PEREZ,

Plaintiff,

v.

KEN CLARK, et al.,

Defendants.

CASE NO. 1:08-cv-00466-OWW-SMS PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, AND DISMISSING
CERTAIN CLAIMS AND DEFENDANTS
FROM ACTION FOR FAILURE TO STATE A
CLAIM

(Docs. 15 and 16)

ORDER REFERRING ACTION BACK TO
MAGISTRATE JUDGE FOR SERVICE OF
PROCESS

Plaintiff Daniel R. Perez is a state prisoner proceeding pro se and in forma pauperis 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 February 4, 2009, the Magistrate Judge filed Findings and Recommendations which recommended dismissal of certain claims and defendants from this action. Plaintiff was given thirty days within which to object, but did not object.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), 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 by proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The Findings and Recommendations, filed February 4, 2009, is adopted in full;

///

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

- 2. This action shall proceed on Plaintiff's amended complaint, filed November 5, 2008, against Defendants Olmos, Perez, Sanchez, Paz, and Munoz for use of excessive physical force, against Defendant Munoz for the unconstitutional conditions of confinement in cell 232, and against Defendants Marquez, Jimenez, Haines, and Talle for denial of medical care;
- 3. Plaintiff's claim arising from the conditions of confinement in cell 117 is dismissed, with prejudice, for failure to state a claim;
- 4. Defendants Clark, Roberson, Castello, Silva, and Blanks are dismissed based on Plaintiff's failure to state any claims upon which relief may be granted against them; and
- 5. This matter is referred back to the Magistrate Judge for service of process.

IT IS SO ORDERED.

Dated: April 2, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE