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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

HERMAN D. SHEAD,  
Plaintiff,  
v.  
C/O VANG,  
Defendant.

Case No. 1:09-cv-00006-AWI-SKO (PC)  
**ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, GRANTING  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT ON STATE LAW CLAIMS,  
AND REFERRING MATTER BACK TO  
MAGISTRATE JUDGE TO SCHEDULE  
FOR TRIAL**  
(Docs. 97 and 125)

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Plaintiff Herman D. Shead (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 5, 2009. This action for damages is proceeding against Defendant Vang (“Defendant”) for excessive force, in violation of the Eighth Amendment of the United States Constitution, and the Court has supplemental jurisdiction over Plaintiff’s state law tort claims.<sup>1</sup>

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, 2015, the Magistrate Judge filed Findings and Recommendations recommending Defendant’s Motion for Partial Summary Judgment be granted. On October 30, 2015, Plaintiff filed a timely Objection. Local Rule 304(b). Plaintiff did not raise

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<sup>1</sup> Plaintiff’s tort claims may include assault, battery, and/or negligence. (Doc. 1, Comp., pp. 9-10; Doc. 18, Order, p. 2:9-11.)

1 any new arguments or submit any new evidence and therefore, it is unnecessary for Defendant to  
2 file a response. Local Rule 304(d).

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

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. The Findings and Recommendations, filed on October 15, 2015, is adopted in full;
- 8 2. Defendant's Motion for Partial Summary Judgment on Plaintiff's state law tort  
9 claims, filed on September 30, 2013, is GRANTED;
- 10 3. This matter is referred back to the Magistrate Judge to schedule for jury trial.

11 IT IS SO ORDERED.

12 Dated: November 4, 2015

  
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13 SENIOR DISTRICT JUDGE

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