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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

HERMAN D. SHEAD,

Plaintiff,

v.

VANG, et al.,

Defendants.

CASE NO. 1:09-cv-00006-OWW-SMS PC

AMENDED ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS, AND
DISMISSING CERTAIN CLAIMS AND
DEFENDANTS FROM ACTION

(Docs. 1 and 15)

Plaintiff Herman D. Shead 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 September 8, 2009, the Magistrate Judge screened Plaintiff’s complaint and recommended dismissal of certain claims and defendants. 28 U.S.C. § 1915A. Plaintiff filed timely objections on October 1, 2009.

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 September 8, 2009, is adopted in full;
2. This action shall proceed against defendant Vang for use of excessive force in the course of subduing Plaintiff during his diabetic seizure;

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3. Plaintiff's First Amendment claim against Defendants Fogle, Bradford and Vera for retaliation and conspiracy to maintain silence and cover up Vang's excessive use of force are dismissed, with prejudice, for failure to state a claim upon which relief may be granted under § 1983;
4. Plaintiff's claim for declaratory relief is dismissed with prejudice;
5. Plaintiff's request for appointment of counsel is denied;
6. Plaintiff's claims against Defendants in their official capacities are dismissed with prejudice;
7. The Court shall exercise supplemental jurisdiction under 28 U.S.C. § 1367(a) over Plaintiff's state tort claim against Defendant Vang, arising from Vang's assault on Plaintiff;
8. The Court will not exercise supplemental jurisdiction under 28 U.S.C. § 1367(a) over Plaintiff's other state claims (Cal. Const. art. I, §17; Cal. Gov't Code § 815.6; Cal. Gov't Code § 820.4; and Cal. Code regs. tit. 15, § 23268(b)), none of which state a cause of action for which relief may be granted;
9. The Court will not exercise supplemental jurisdiction over Plaintiff's state claims against Fogle, Bradford, and Vera; and
10. The Clerk of Court shall reflect on the docket the dismissal of Defendants Fogle, Bradford, and Vera.

IT IS SO ORDERED.

Dated: February 2, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE