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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA J. CANTU,  
Plaintiff,  
v.  
GARCIA, et al.,  
Defendants.

No. 1:09-cv-00177-DAD-DLB

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS DENYING CROSS  
MOTIONS FOR SUMMARY JUDGMENT  
AND REFERRING BACK TO THE  
MAGISTRATE FOR FURTHER  
PROCEEDINGS

(Doc. Nos. 139, 146, 149, 154)

Plaintiff Joshua J. Cantu is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action by filing his original complaint on January 15, 2009, in the U.S. District Court for the Northern District of California. The case was transferred to this court on January 26, 2009. The action is proceeding on plaintiff's second amended complaint, filed June 6, 2013, only on the following claims: (1) an Eighth Amendment excessive force claim against defendant Garcia; and (2) an Eighth Amendment failure to protect claim against defendants Goree and Baptiste. (*See* Doc. Nos. 91, 92.)

Plaintiff filed a motion seeking summary judgment in his favor as to defendant Garcia on May 14, 2015. (Doc. 139.) He filed a separate motion seeking summary judgment in his favor on his claim against defendant Baptiste on May 28, 2015. (Doc. No. 146.) Defendants filed their

1 own motion for summary judgment on June 15, 2015. (Doc. No. 149.) The matters were referred  
2 to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

3 On December 15, 2015, the assigned magistrate judge issued findings and  
4 recommendations recommending that all of the parties' motions for summary judgment be  
5 denied. (Doc. No. 154.) Those findings and recommendations were served on the parties and  
6 contained notice that any objections thereto must be filed within thirty days. After receiving an  
7 extension of time to do so, plaintiff filed objections on February 24, 2016. (Doc. No. 159.)  
8 Defendants did not file any objections.

9 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a  
10 de novo review of this case. Having carefully reviewed the entire file, including plaintiff's  
11 objections, the court finds the findings and recommendations to be supported by the record and  
12 by proper analysis.

13 In his objections plaintiff merely argues that his testimony, as well as the declaration of  
14 inmate De La Riva, "should be evidence enough to determine" defendant Garcia used excessive  
15 force, and defendants Goree and Baptiste failed to intervene. (Doc. No. 159, at 4). This is not the  
16 standard applicable on summary judgment, however. Although plaintiff may have come forward  
17 with evidence favorable to his claims, the court cannot ignore the evidence offered by defendants  
18 in support of their position and in opposition to plaintiff's motions for summary judgment. The  
19 conflicting evidence presented by the parties creates a disputed issue of material fact, meaning  
20 that this case cannot be disposed of on summary judgment. Fed. R. Civ. P. 56(a); *Washington*  
21 *Mut. Inc. v. United States*, 636 F.3d 1207, 1216 (9th Cir. 2011).

22 For the reasons set forth above:

- 23 1. The findings and recommendations filed December 15, 2015 (Doc. No. 154) are  
24 adopted in full;

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2. Plaintiff's motions for summary judgment (Doc. Nos. 139, 146), and defendants' motion for summary judgment (Doc. No. 149) are DENIED; and
3. This matter is referred back to the magistrate judge for further proceedings.

IT IS SO ORDERED.

Dated: March 18, 2016

  
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UNITED STATES DISTRICT JUDGE