

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BARRY LOUIS LAMON,

Plaintiff,

v.

DERRAL ADAMS, et al.,

Defendants.

CASE NO. 1:09-cv-00205-LJO-SMS PC

ORDER DIRECTING ACTION TO PROCEED
ON FIRST AND EIGHTH AMENDMENT
CLAIMS AGAINST DEFENDANTS BAER,
VALDEZ, BUENOS, LEE, PONCE, AND
PURVIS; DISMISSING OTHER CLAIMS AND
DEFENDANTS; ORDERING PARTIES TO
SUBMIT STATEMENTS ON FURTHER
DISCOVERY; AND REFERRING MATTER
BACK TO MAGISTRATE JUDGE FOR
FURTHER PROCEEDINGS

(Docs. 1, 111, 117, and 118)

Plaintiff, Barry Louis Lamon ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. §1983. Plaintiff filed this action on February 2, 2009. (Doc. 1.) Initially the Complaint was screened and went forward upon Plaintiff's consent to proceed only on the claims found cognizable at that time (Docs. 7, 8, 9).

Subsequently, the United States Supreme Court issued the decision in *Ashcroft v. Iqbal*, ___ U.S. ___, 129 S.Ct. 1937 (2009), which ushered in stricter pleading standards. *See Moss v. U.S. Secret Service*, 572 F.3d 962, 968-69 (9th Cir. 2009) (citing *Iqbal*; *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

On May 10, 2011, Plaintiff's Complaint was re-screened and found to only state cognizable claims against Defendants Baer, Valdez, Buenos, Lee, Ponce, and Purvis for use of excessive force, deliberate indifference to a threat to Plaintiff's safety, and retaliation; and

1 Plaintiff was ordered to either file an amended complaint or notify the Court of his willingness to
2 proceed only on his cognizable claims. (Doc. 111.) Plaintiff filed objections which were
3 overruled and moved for reconsideration which was denied. (Docs. 116, 117.) On June 8, 2011,
4 Plaintiff notified the Court that he is willing to proceed on the claims found to be cognizable in
5 the re-screening order. (Doc. 118.)

6 Accordingly, in light of the re-screening order and Plaintiff's election to proceed on his
7 cognizable claims, it is HEREBY ORDERED that:

- 8 1. This action shall proceed on Plaintiff's complaint, filed February 2, 2009, only on
9 Plaintiff's claims against Defendants Baer, Valdez, Buenos, Lee, Ponce, and
10 Purvis for Eighth Amendment excessive use of force and deliberate indifference
11 to a threat to Plaintiff's safety and for retaliation in violation of the First
12 Amendment;¹
- 13 2. All other defendants and claims are dismissed from this action;
- 14 3. Within thirty (30) days of the date of service of this order, the parties are ordered
15 to file statements indicating what, if any, further discovery is needed on the
16 remaining claims and within fifteen (15) days of the filing of those discovery
17 statements, the parties may file responsive statements addressing discovery sought
18 by the opposing side; and
- 19 4. This matter is referred back to the Magistrate Judge to address discovery issues.

20 IT IS SO ORDERED.

21 **Dated: June 13, 2011**

22 /s/ Lawrence J. O'Neill
23 UNITED STATES DISTRICT JUDGE
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28 ¹ The cognizable claims which Plaintiff is electing to proceed on are not new, but rather were merely re-screened. Defendants have previously answered such that a responsive pleading is not required.