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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CARLOS PENA,

Plaintiff,

v.

ROBERT SILLEN, et al.,

Defendants.

CASE NO. 1:09-cv-00404-LJO-SMS PC

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

(Docs. 12 and 13)

ORDER REQUIRING DEFENDANTS
VALENCIA AND DEVER TO RESPOND TO
SECOND AMENDED COMPLAINT WITHIN
THIRTY DAYS

_____ /

Plaintiff Carlos Pena, a state prisoner proceeding pro se, filed this civil action on September 5, 2008, in Fresno County Superior Court. Defendants Huckabay, Ericson, Tucker, Valencia, and Dever removed it to the court on February 27, 2009. . 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 January 26, 2011, a [Findings and Recommendations](#) was filed in which the Magistrate Judge screened Plaintiff's [Second Amended Complaint](#) and recommended dismissal of certain claims and parties for failure to state a claim. 28 U.S.C. § 1915A. The parties were notified that objections, if any, were due within thirty days. No objections were filed

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

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1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The Court adopts the Findings and Recommendations filed on January 26, 2011, in
3 full;
- 4 2. This action shall proceed on Plaintiff's second amended complaint, filed September
5 18, 2009, against Defendants Valencia and Dever for use of excessive force, in
6 violation of the Eighth Amendment;
- 7 3. Plaintiff's Eighth Amendment medical care claims, Eighth Amendment excessive
8 force claim against Defendant Tucker, and First Amendment retaliation claim are
9 dismissed, with prejudice, for failure to state a claim;
- 10 4. Plaintiff's state law tort claims are dismissed, without prejudice, for failure to state
11 a claim;
- 12 5. Plaintiff's claims for injunctive and declaratory relief are dismissed for failure to
13 state a claim;
- 14 6. Defendants Huckabay, Ericson, Tucker, Hanner, and Sillen are dismissed from the
15 action; and
- 16 7. Defendants Valencia and Dever shall file a response to Plaintiff's second amended
17 complaint within **thirty (30) days** from the date of service of this order.

18
19 IT IS SO ORDERED.

20 **Dated: March 10, 2011**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE