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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DERRICK LANE JOHNSON,

Plaintiff,

v.

S. CAVAGNARO, et al.,

Defendants.

CASE NO. 1:09-cv-00742-AWI-SKO PC

ORDER REGARDING FINDINGS AND RECOMMENDATIONS

ORDER DISMISSING CONDITIONS OF CONFINEMENT CLAIM

(Doc. 17)

Plaintiff Derrick Lane Johnson (“Plaintiff”) 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 302.

On July 20, 2010, the Magistrate Judge ordered that this action would proceed on Plaintiff’s Eighth Amendment claim against Defendants for their alleged use or mechanical restraints, plastic restraints, and duct tape for three days, which caused Plaintiff pain and suffering. The Magistrate Judge issued a Findings and Recommendations that recommended Plaintiff’s Eighth Amendment claim based on the conditions of the holding cell, including the lack of water, toilet facilities, and blankets, be dismissed from this action for failing to state a claim upon which relief can be granted. (Doc. #17.) The Findings and Recommendations were served on Plaintiff and contained notice to Plaintiff that any objections to the Findings and Recommendations were to be filed within thirty (30) days of the date on which the Findings and Recommendations were served. Plaintiff has not filed objections to the Findings and Recommendations.

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 305, this Court
2 has conducted a de novo review of this case. A review of the complaint indicates that the factual
3 basis of Plaintiff's Eighth Amendment claim is Defendants' alleged use of mechanical restraints,
4 plastic restraints, and duct tape for three days. On this basis, the court agrees¹ that this action should
5 proceed on this Eighth Amendment claim and not on any potential claims arising from the holding
6 cell's conditions.

7 Accordingly, the Court HEREBY ORDERS that:

- 8 1. The July 20, 2010 Findings and Recommendations' conclusion are ADOPTED;
- 9 2. Plaintiff's Eighth Amendment claims based on the conditions of the holding cell are
10 DISMISSED; and
- 11 3. This action shall proceed on Plaintiff's claims against Cavagnaro, Lane, and Does 1-
12 6 for excessive force in violation of the Eighth Amendment for their use of
13 mechanical restraints, plastic restraints, and duct tape on Plaintiff for three days.

14 IT IS SO ORDERED.

15 Dated: November 13, 2010

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18 CHIEF UNITED STATES DISTRICT JUDGE
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28 ¹ The court declines to adopt the Findings and Recommendations to the extent the Findings and
Recommendations imply that an actual serious injury from unconstitutional prison conditions is necessary for an
Eighth Amendment claim.