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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

THORNELL BROWN,  
Plaintiff,

CASE NO.: 1:09-cv-00792-LJO-GBC (PC)

v.

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS

R. J. WILLIAMS, et al.,  
Defendants.

ORDER DISMISSING CERTAIN  
CLAIMS

/ (Doc. 34)

Plaintiff Thornell Brown (“Plaintiff”) is a state prisoner proceeding in forma pauperis (“IFP”) in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s complaint, filed May 4, 2009, against Defendants Williams and Gonzales (“Defendants”) for use of excessive force and subjecting Plaintiff to unconstitutional conditions of confinement following the use of force on May 23, 2005, in violation of the Eighth Amendment. (Docs. 1, 8). 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 May 6, 2010, Defendants filed a request for judicial notice, an unenumerated 12(b) motion to dismiss pursuant to 28 U.S.C. §1915(g) and a 12(b)(6) motion to dismiss on grounds of qualified immunity. (Docs. 16, 17). On February 3, 2011, the Magistrate Judge filed a Findings and Recommendations herein which was served on the Plaintiff and which contained notice to the Plaintiff that any objections to the Findings and Recommendations were to be filed within thirty

1 days. On March 4, 2011, Plaintiff motioned for a forty-five-day extension to file objections to the  
2 Findings and Recommendations and later submitted his objections on April 7, 2011. (Docs. 36, 38).

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has  
4 conducted a *de novo* review of this case. Having carefully reviewed the entire file, the Court finds  
5 the Findings and Recommendations to be supported by the record and by proper analysis.

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. The Findings and Recommendations, filed February 3, 2011, is adopted in full;
- 8 2. Defendants' unenumerated 12(b) motion to dismiss pursuant to § 1915(g) is  
9 DENIED;
- 10 3. Defendants' 12(b)(6) motion to dismiss is GRANTED IN PART to the extent that the  
11 excessive force claim against Defendants Williams and Gonzales is DISMISSED  
12 WITH PREJUDICED based on Defendants' entitlement to qualified immunity; and
- 13 4. Defendants' 12(b)(6) motion to dismiss is DENIED IN PART based on finding that  
14 Defendants were not entitled to qualified immunity for the conditions of confinement  
15 claim.

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26 IT IS SO ORDERED.

27 **Dated: April 8, 2011**

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