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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

LAMONT SHEPARD,	CASE NO. 1:09-cv-00809-LJO-SKO PC
Plaintiff,	FINDINGS AND RECOMMENDATIONS
v.	RECOMMENDING THAT DEFENDANT’S
	MOTION TO DISMISS BE DENIED
T. QUILLEN, et al.,	(Doc. 27)
Defendants.	OBJECTIONS DUE WITHIN 30 DAYS

Plaintiff Lamont Shepard (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On September 21, 2010, Defendant Quillen filed a motion to dismiss. (Doc. #27.) Plaintiff filed an opposition on September 28, 2010. (Doc. #28.) Defendant filed a reply on September 30, 2010. (Doc. #29.)

Defendants argue that Plaintiff’s retaliation claim against Defendant Quillen should be dismissed for failure to state a claim. In his opposition, Plaintiff argues that his amended complaint did not raise any retaliation claims against Defendant Quillen. Plaintiff states that the only claims raised in his amended complaint are an excessive force claim against Defendant Quillen and a retaliation claim against Defendant Wise.<sup>1</sup>

Since Plaintiff’s amended complaint does not raise any retaliation claim against Defendant Quillen, the Court will deny/disregard Defendant’s motion to dismiss. Plaintiff’s amended

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<sup>1</sup>In their moving papers, Defendant suggests that Plaintiff failed to obtain permission to add Defendant Wise as a defendant in this action. However, Defendant has failed to cite any authority suggesting that permission is necessary.

1 complaint will be construed as only raising an excessive force claim against Defendant Quillen and  
2 a retaliation claim against Defendant Wise.<sup>2</sup>

3 Based on the foregoing, it is HEREBY RECOMMENDED that Defendant's motion to  
4 dismiss be DENIED.

5 These Findings and Recommendations are submitted to the United States District Judge  
6 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)  
7 days after being served with these Findings and Recommendations, any party may file written  
8 objections with the Court and serve a copy on all parties. Such a document should be captioned  
9 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
10 shall be served and filed within ten (10) days after service of the objections. The parties are advised  
11 that failure to file objections within the specified time may waive the right to appeal the District  
12 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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14 IT IS SO ORDERED.

15 **Dated:** February 2, 2011

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

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<sup>2</sup>In a separate order, the Court will facilitate service of process on Defendant Wise.