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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LAMONT SHEPARD,

Plaintiff,

v.

DR. COHEN, et al.,

Defendants.

CASE NO. 1:09-cv-01628-OWW-GSA PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF'S
MOTION TO PROCEED ON CLAIMS FOUND
COGNIZABLE BE GRANTED

(Doc. 9)

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION
PROCEED ONLY AGAINST DEFENDANTS
COHEN, LOPEZ, CAMPBELL, AND DEAN
FOR VIOLATION OF HIS RIGHTS TO DUE
PROCESS AND ALL OTHER CLAIMS BE
DISMISSED

OBJECTIONS, IF ANY, DUE IN 30 DAYS

Plaintiff Lamont Shepard, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on September 15, 2009. (Doc. 1.) The complaint names C.M.O. Dr. Cohen, Sergeant I. Lopez, Correctional Officer J. Campbell, Correctional Officer Z. Dean, and Jane Doe as defendants and alleges violations under the Due Process Clause of the Fourteenth Amendment, use of excessive physical force in violation of the Eighth Amendment, and assault and battery under California law.

The Court screened Plaintiff's complaint pursuant to 28 U.S.C. § 1915A and found that it states cognizable claims for relief under section 1983 against Defendants Cohen, Lopez, Campbell, Dean, and Jane Doe for violation of his rights under the Due Process Clause of the Fourteenth

1 Amendment. On February 25, 2010, Plaintiff was given leave to either file a first amended
2 complaint, or in the alternative, to notify the Court that he does not wish to file a first amended
3 complaint and instead wishes to proceed only on the claims identified by the Court as
4 viable/cognizable in the Court's order. (Doc. 7.) On March 4, 2010, Plaintiff filed written notice
5 to the Court that he wishes to proceed only on the claims found cognizable by the Court. (Doc. 9.)

6 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 7 1. Plaintiff's motion to be allowed to proceed on claims found cognizable, filed on
8 March 4, 2010 be GRANTED;
- 9 2. This action proceed against Defendants Cohen, Lopez, Campbell, and Dean¹ only on
10 Plaintiff's claims for violation of his rights under the Due Process Clause of the
11 Fourteenth Amendment; and
- 12 3. All remaining claims be dismissed from this action.

13 These Findings and Recommendations will be submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
15 days after being served with these Findings and Recommendations, Plaintiff may file written
16 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
17 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
18 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
19 1153 (9th Cir. 1991).

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24 IT IS SO ORDERED.

25 **Dated: March 9, 2010**

/s/ Gary S. Austin
26 UNITED STATES MAGISTRATE JUDGE

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¹ The United States Marshal cannot initiate service on a Doe defendant. Plaintiff may amend once he
ascertains the identity of Jane Doe. Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999).