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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

BILLY PHELPS,	)	1:09-cv-1925 AWI DLB
	)	
	)	
Plaintiff,	)	ORDER ADOPTING FINDINGS AND
	)	RECOMMENDATION REGARDING
v.	)	DISMISSAL OF CERTAIN CLAIMS
	)	WITHOUT LEAVE TO AMEND
	)	
CHRISTAIN RAMOS, et al.,	)	(Document 6)
	)	
	)	
Defendants.	)	

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Plaintiff Billy Phelps (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action on November 2, 2009.

On December 23, 2009, the Magistrate Judge issued [Findings and Recommendation](#) that Plaintiff’s state law claims for violation of the California Penal Code be dismissed without leave to amend.<sup>1</sup> The Findings and Recommendation was served on Plaintiff and contained notice that any objections were to be filed within thirty (30) days. Over thirty (30) days have passed and Plaintiff has not filed objections.

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

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<sup>1</sup>The Magistrate Judge also recommended that the remaining claims be dismissed with leave to amend and ordered Plaintiff to file an amended complaint within thirty (30) days.

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The Findings and Recommendation dated December 23, 2009, is ADOPTED IN  
3 FULL;
- 4 2. Plaintiff's state law claims for violation of the California Penal Code are  
5 DISMISSED WITHOUT LEAVE TO AMEND;
- 6 3. The remaining claims are DISMISSED WITH LEAVE TO AMEND. Plaintiff  
7 SHALL file an amended complaint within thirty (30) days of the date of service of  
8 this order. Plaintiff is only granted leave to amend his excessive force and  
9 malicious prosecution claims. If Plaintiff attempts to amend beyond this claim, the  
10 Court will recommend that the entire action be dismissed; and
- 11 4. Failure to comply with this order will result in dismissal of this action.
- 12

13 IT IS SO ORDERED.

14 **Dated: February 17, 2010**

/s/ Anthony W. Ishii  
CHIEF UNITED STATES DISTRICT JUDGE