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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GREGORY RODRIGUEZ,

CASE NO. 1:09-cv-02184-AWI-SKO PC

Plaintiff,

ORDER ADOPTING FINDINGS AND RECOMMENDATIONS, DENYING DEFENDANT’S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AND FOR FAILURE TO EXHAUST, AND REQUIRING DEFENDANT TO FILE A RESPONSE TO PLAINTIFF’S COMPLAINT WITHIN TWENTY DAYS

v.

HOPKINS,

Defendant.

(Docs. 15 and 22)

Plaintiff Gregory Rodriguez, proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on December 16, 2009. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

This action is proceeding against Defendant Hopkins for use of excessive physical force, in violation of the Eighth Amendment. On June 6, 2011, Defendant filed a motion to dismiss Plaintiff’s due process claim for failure to state a claim and to dismiss the action for failure to exhaust. 42 U.S.C. § 1997e(a); Fed. R. Civ. P. 12(b). On August 12, 2011, the Magistrate Judge filed a Findings and Recommendations recommending that Defendant’s motion to dismiss be denied. The parties were given fifteen days within which to file objections, but no objections were filed.

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

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The Findings and Recommendations, filed August 12, 2011, is adopted in full;
3 2. Defendant's motion to dismiss, filed June 6, 2011, is DENIED; and
4 3. Defendant shall file a response to Plaintiff's complaint within **twenty (20) days** from
5 the date of service of this order.

6 IT IS SO ORDERED.

7 Dated: December 23, 2011

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10 CHIEF UNITED STATES DISTRICT JUDGE
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