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

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|-------------------------|---|--------------------------------------|
| LEONARDO JOSEPH RANGEL, | ) | Case No.: 1:10-cv-01790-AWI-BAM (PC) |
| Plaintiff,              | ) | ORDER ADOPTING FINDINGS AND          |
| v.                      | ) | RECOMMENDATIONS REGARDING            |
| D. LATRAILLE, et al.,   | ) | DEFENDANTS’ MOTION FOR SUMMARY       |
| Defendants.             | ) | JUDGMENT                             |
|                         | ) | (ECF Nos. 56, 87)                    |
|                         | ) |                                      |
|                         | ) |                                      |
|                         | ) |                                      |

Plaintiff Leonardo Joseph Rangel (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s first amended complaint, filed on January 9, 2012, against Defendants LaTraille and Taber<sup>1</sup> for excessive force in violation of the Eighth Amendment, retaliation in violation of the First Amendment and assault and battery under state law.

On August 20, 2014, the Magistrate Judge issued Findings and Recommendations that Defendants’ motion for summary judgment, filed on June 7, 2013, be granted in part and denied in part as follows: (1) Defendants’ motion for summary judgment on Plaintiff’s claim of excessive force in violation of the Eighth Amendment and on Plaintiff’s claim of assault and battery in violation of state law be denied; (2) Defendants’ motion for summary judgment on Plaintiff’s claim of retaliation in violation of the First Amendment be granted; and (3) Defendants’ motion for qualified immunity on Plaintiff’s claim of excessive force be denied. The Findings and Recommendations were served on the parties and contained notice that any objections were to be filed within thirty (30) days after service. (ECF No. 111.) On September 22, 2014, the Court granted Defendants’ request for an

<sup>1</sup> Defendants were erroneously sued as “D. Latraille” and “J. Tabor” in the first amended complaint.

1 extension of time to file objections to the findings and recommendations. Defendants' objections were  
2 due on or before October 10, 2014. No objections have been filed.

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

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. The Findings and Recommendations issued on August 20, 2014, are adopted in full;
- 8 2. Defendants' motion for summary judgment, filed on June 7, 2013, is GRANTED IN  
9 PART and DENIED IN PART as follows:
  - 10 a. Defendants' motion for summary judgment on Plaintiff's claim of excessive force in  
11 violation of the Eighth Amendment and on Plaintiff's claim of assault and battery in  
12 violation of state law is DENIED;
  - 13 b. Defendants' motion for summary judgment on Plaintiff's claim of retaliation in  
14 violation of the First Amendment is GRANTED;
  - 15 c. Defendants' motion for qualified immunity on Plaintiff's claim of excessive force is  
16 DENIED;
- 17 3. This matter shall be set for jury trial on Plaintiff's claims of excessive force in violation  
18 of the Eighth Amendment and assault and battery under state law against Defendants  
19 LaTraille and Taber; and
- 20 4. This matter is referred back to the Magistrate Judge for further proceedings consistent  
21 with this order.

22  
23 IT IS SO ORDERED.

24 Dated: October 29, 2014

  
25 SENIOR DISTRICT JUDGE