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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DWAYNE L. BURGESS,

Plaintiff,

v.

RAYA, et al.,

Defendants.

Case No. 1:11-cv-00921-LJO-JLT (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATION TO GRANT DEFENDANTS
MOTION TO DISMISS PLAINTIFF'S STATE
COURT CLAIMS AND REQUESTED
DECLARATORY RELIEF**

(Doc. 35, 47)

Plaintiff, Dwayne L. Burgess, is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Plaintiff is proceeding on his claims against Defendants Raya, Garcia, Polanco, and Fernandez for battery under California law and excessive force in violation of the Eight Amendment and against Defendants Raya and Polanco under the additional claims of conspiracy and retaliation in violation of the First Amendment as stated in the Third Amended Complaint. (Docs. 27, 29, 32.)

On April 15, 2104, a findings and recommendation issued to grant Defendants' motion (Doc. 35) to dismiss Plaintiff's claims under California law based on his failure to comply with the California Tort Claims Act ("CTCA") and to dismiss Plaintiff's request for declaratory relief.

1 (Doc. 47.) The Findings and Recommendation was served on Plaintiff and contained notice that
2 any objections to the Findings and Recommendations were to be filed within thirty days. No
3 objections have been filed.

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

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. the Findings and Recommendation, filed April 2, 2014 (Doc. 47),
9 is adopted in full;
- 10 2. Plaintiff's battery claim under California law against Defendants Raya, Fernandez,
11 Polanco, and Garcia is DISMISSED with prejudice;
- 12 3. Plaintiff's request for declaratory relief is DISMISSED; and
- 13 4. the matter is referred back to the Magistrate Judge for further proceedings.

14
15 IT IS SO ORDERED.

16 Dated: May 15, 2014

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE