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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LOUIS V. RODRIGUEZ,
Plaintiff,
vs.
CDCR DEPARTMENTAL REVIEW
BOARD, et al.,
Defendants.

Case No. 1:12-cv-00757-AWI-JLT (PC)
**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO GRANT
AND DNEY DEFENDANTS' MOTION
TO DISMISS**
(Docs. 52, 60, 66)

Plaintiff, Louis V. Rodriguez, is a state prisoner proceeding *pro se* and *in forma pauperis* with 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 First Amended Complaint. (Doc. 28.) Defendants filed a motion to dismiss. (Doc. 52.) Plaintiff responded by filing an opposition and a motion for leave to file an amended complaint to which Defendants replied. (Docs. 60, 64.) On December 23, 2014, the Magistrate Judge recommended Defendants' motion to dismiss be granted in part and denied in part and that Plaintiff's motion for leave to amend be granted and allowed thirty days for the parties to file objections. (Doc. 66.) More than thirty days have now passed and neither side has 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 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.

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Accordingly, IT IS HEREBY ORDERED that:

1. The Findings and Recommendations, issued on December 23, 2014, is adopted in full;
2. Defendants’ motion to dismiss Plaintiff’s retaliation claims against Cox, Cavazos, and Terrell for failure to state a claim is DENIED;
3. Defendants’ motion to dismiss Plaintiff’s excessive force claims against Cavazos and Terrell for failure to state a claim is DENIED;
4. Defendants’ motion to dismiss Plaintiff’s excessive force claim for violation of Federal Rule of Civil Procedure 8(a) regarding the incident of November 3, 2010, is GRANTED with leave to amend and Plaintiff’s request for leave to amend as stated in his opposition is GRANTED;
5. Defendants’ motion to dismiss Plaintiff’s excessive force claims against Cox, Cavazos, and Terrell as barred by *Heck* and *Balisok* is DENIED;
6. Defendants’ motion to dismiss Plaintiff’s retaliation and excessive force claims against Defendants Cox, Cavazos, and Terrell based on qualified immunity is DENIED without prejudice; and
7. within thirty (30) days from the date of service of this order, Plaintiff must either:
 - a. file a second amended complaint curing the deficiencies identified in the findings and recommendations, or
 - b. notify the Court in writing that he does not wish to file a second amended complaint and wishes to proceed only on the claims identified in the findings and recommendations as viable; and
8. If Plaintiff fails to comply with this order, this action will be dismissed for failure to obey a court order.

IT IS SO ORDERED.

Dated: February 21, 2015



SENIOR DISTRICT JUDGE