

1
2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF CALIFORNIA
5

6 ALEJANDRO JOSE MORALES,

7 Plaintiff,

8 vs.

9 H. SHERWOOD, et al.,

10 Defendants.
11
12
13
14
15
16

1:13-cv-01582-AWI-GSA-PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(Doc. 31.)

ORDER FOR THIS ACTION TO
PROCEED WITH THE THIRD AMENDED
COMPLAINT, ON PLAINTIFF'S CLAIMS
AGAINST DEFENDANTS SHERWOOD,
COONTZ, AND FELIX FOR EXCESSIVE
FORCE; AGAINST DEFENDANT
SHERWOOD FOR RETALIATION; AND
AGAINST DEFENDANT COONTZ FOR
FAILURE TO PROTECT PLAINTIFF;
AND DISMISSING ALL OTHER CLAIMS
AND DEFENDANTS FROM THIS
ACTION FOR FAILURE TO STATE A
CLAIM

17 Alejandro Jose Morales ("Plaintiff") is a state prisoner proceeding pro se with this civil
18 rights action pursuant to 42 U.S.C. § 1983. This matter was referred to a United States
19 Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

20 On April 15, 2015, the Court entered [Findings and Recommendations](#), recommending
21 that this action proceed with the with the Third Amended Complaint, against defendants
22 Sherwood, Coontz, and Felix for use of excessive force under the Eighth Amendment; against
23 defendant Sherwood for retaliation under the First Amendment; and against defendant Coontz
24 for failure to protect Plaintiff in violation of the Eighth Amendment; and that all other claims
25 and defendants be dismissed for failure to state a claim. (Doc. 31.) Plaintiff was provided an
26 opportunity to file objections to the Findings and Recommendations within thirty days. To
27 date, Plaintiff has not filed objections or otherwise responded to the Findings and
28 Recommendations.

1 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this
2 Court has conducted a de novo review of this case. Having carefully reviewed the entire file,
3 the Court finds the Findings and Recommendations to be supported by the record and proper
4 analysis.

5 Accordingly, THE COURT HEREBY ORDERS that:

- 6 1. The Findings and Recommendations issued by the Magistrate Judge on April 15,
7 2015, are ADOPTED in full;
- 8 2. This action now proceeds on Plaintiff's Third Amended Complaint filed on July
9 3, 2014, against defendants Sherwood, Coontz, and Felix for use of excessive
10 force under the Eighth Amendment; against defendant Sherwood for retaliation
11 under the First Amendment; and against defendant Coontz for failure to protect
12 Plaintiff in violation of the Eighth Amendment;
- 13 3. All remaining claims and defendants are DISMISSED from this action;
- 14 4. Plaintiff's claims for inadequate medical care under the Eighth Amendment, and
15 for falsification of his disciplinary report under the Due Process Clause are
16 dismissed for Plaintiff's failure to state a claim under § 1983;
- 17 5. Defendants Gilera and Gray are dismissed from this action based on Plaintiff's
18 failure to state any claims against them;
- 19 6. The Clerk of Court is directed to reflect the dismissal of defendants Gilera and
20 Gray from this action on the court's docket; and
- 21 7. This case is referred back to the Magistrate Judge for further proceedings,
22 including initiation of service of process.

23 IT IS SO ORDERED.

24 Dated: May 28, 2015

25 
26 _____
27 SENIOR DISTRICT JUDGE
28