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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRACY L. STEWART,  
Plaintiff,  
v.  
K. HOLLAND, et al.,  
Defendants.

No. 1:14-cv-00322-DAD-BAM

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND REFERRING  
BACK TO MAGISTRATE JUDGE

(Doc. Nos. 27, 30)

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* 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.

On September 13, 2016, the assigned magistrate judge screened plaintiff's amended complaint and issued findings and recommendations, recommending that this action proceed on plaintiff's claims against defendants Serna and Langhardt for excessive use of force in violation of the Eighth Amendment, against defendants Serna, Langhardt, Carey, and Nixon for failure to decontaminate plaintiff in violation of the Eighth Amendment, against defendant Nixon for deliberate indifference to serious medical needs, and against defendant Langhardt for retaliation in violation of the First Amendment. These claims arise out of plaintiff's allegations that, after he made complaints about sexual harassment by defendant Langhardt, plaintiff was pepper-sprayed during an escort on April 3, 2013 without cause, and was not properly decontaminated or

1 provided with medical treatment. The magistrate judge recommended that all other claims, -  
2 including his sexual harassment, supervisory liability and inadequate medical care with respect to  
3 a knee brace claims - and defendants be dismissed for the failure to state a cognizable claim for  
4 relief. (Doc. No. 27.) These findings and recommendations were served on plaintiff, and  
5 contained notice he could file any objections within fourteen days. On September 26, 2016,  
6 plaintiff timely filed objections. (Doc. No. 28.)

7 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the undersigned has  
8 conducted a *de novo* review of this case. Having carefully reviewed the entire file, including  
9 plaintiff's submissions, the court finds the September 13, 2016 findings and recommendations to  
10 be supported by the record and by proper analysis. Despite plaintiff's belief that it was "common  
11 sense" that he needed the knee brace he alleges was purposefully packed away during his transfer  
12 and therefore made inaccessible to him, his objections provide no basis upon which to disagree  
13 with the magistrate judge's findings and recommendations. Similarly, plaintiff has provided no  
14 persuasive reason to believe he can state a claim related to the alleged sexual harassment or  
15 purported violations of the equal protection clause, and no reason to believe he can allege facts  
16 sufficient to demonstrate supervisory liability.

17 Given the foregoing:

- 18 1. The findings and recommendations issued September 13, 2016 (Doc. No. 27) are  
19 adopted in full;
- 20 2. This action shall proceed on plaintiff's claims against defendants Serna and Langhardt  
21 for excessive force in violation of the Eighth Amendment, against defendants Serna, Langhardt,  
22 Carey and Nixon for failure to decontaminate plaintiff in violation of the Eighth Amendment,  
23 against defendant Nixon for deliberate indifference to serious medical needs, and against  
24 defendant Langhardt for retaliation in violation of the First Amendment;
- 25 3. All other claims and defendants not listed above are dismissed from this action for the  
26 failure to state a claim upon which relief may be granted;
- 27 4. The Clerk of the Court is directed to update the caption and docket to reflect the above  
28 dismissals and to add defendant Nixon to the docket;

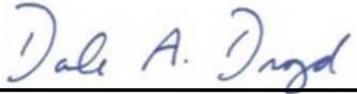
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5. Plaintiff's motion to correct clerical error is denied as moot (Doc. No. 30); and

6. This matter is referred back to the assigned magistrate judge for proceedings consistent with this order.

IT IS SO ORDERED.

Dated: July 6, 2017

  
UNITED STATES DISTRICT JUDGE