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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

OMAR GARCIA, JR.,  
Plaintiff,  
v.  
TULARE COUNTY MAIN JAIL, et al.,  
Defendants.

No. 1:14-cv-00476-DAD-BAM (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND DISMISSING  
CERTAIN CLAIMS AND DEFENDANTS

(Doc. No. 39)

Plaintiff Omar Garcia, Jr., a state prisoner proceeding *pro se* and *in forma pauperis*, initiated this civil rights action pursuant to 42 U.S.C. § 1983 while he was detained at the Bob Wiley Detention Facility in Visalia, California. Plaintiff is now a state prisoner housed at California State Prison, Los Angeles County. Defendants O’Rafferty, Kaiois (sued herein as Kaious), Onstott, Flores, Myers (sued herein as Meyers), Avina, and Ellis have appeared in this action and consented to magistrate judge jurisdiction. (Doc. No. 19.) Defendant Tulare County Main Jail has not yet appeared in this action.

On April 21, 2017, the assigned magistrate judge screened plaintiff’s first amended complaint and found that it stated a cognizable claim against: (1) defendants O’Rafferty and Kaiois for excessive use of force in violation of the Fourteenth Amendment; (2) defendant Onstott for failure to intervene in violation of the Fourteenth Amendment; (3) defendants

1 O’Rafferty, Kaiois, Flores, Avina, Myers, and Ellis for deliberate indifference to plaintiff’s  
2 serious medical needs in violation of the Fourteenth Amendment; and (4) defendants O’Rafferty,  
3 Kaiois, Flores, Avina, Myers, and Ellis for state law negligence. (Doc. No. 33.) In that screening  
4 order the magistrate judge dismissed all other claims and defendants, with prejudice, for failure to  
5 state a claim. (*Id.*) This case has since proceeded against defendants O’Rafferty, Kaiois, Onstott,  
6 Flores, Myers, Avina, and Ellis.

7 On December 7, 2017, the assigned magistrate judge re-screened plaintiff’s first amended  
8 complaint, recognizing that in a recent opinion, *Williams v. King*, 875 F.3d 500 (9th Cir. 2017),  
9 the Ninth Circuit had held that a magistrate judge does not have jurisdiction to dismiss claims  
10 with prejudice in screening prisoner complaints even if a plaintiff has consented to magistrate  
11 judge jurisdiction, as plaintiff did here, where not all defendants, including those not yet  
12 appearing in the action, had not. (Doc. No. 39.) The magistrate judge issued findings and  
13 recommendations recommending that plaintiff’s non-cognizable claims be dismissed by the court.  
14 (*Id.*) The parties were given fourteen days to file objections to those findings and  
15 recommendations. The parties did not file any objections, and the time in which to do so has  
16 expired.

17 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, the  
18 undersigned has conducted a *de novo* review of the case. The undersigned concludes the findings  
19 and recommendations are supported by the record and by proper analysis.

20 Accordingly it is hereby ordered that:

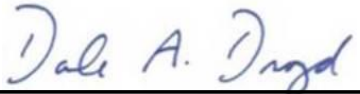
- 21 1. The findings and recommendations issued on December 7, 2017, (Doc. No. 39) are  
22 adopted in full;
- 23 2. Plaintiff’s claims against defendant Tulare County Main Jail are dismissed for failure to  
24 state a claim upon which relief may be granted; and
- 25 3. This action proceeds solely on plaintiff’s claims against: (1) defendants O’Rafferty and  
26 Kaiois for excessive use of force in violation of the Fourteenth Amendment; (2) defendant  
27 Onstott for failure to intervene in violation of the Fourteenth Amendment; (3) defendants  
28 O’Rafferty, Kaiois, Flores, Avina, Myers, and Ellis for deliberate indifference to

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plaintiff's serious medical needs in violation of the Fourteenth Amendment; and (4) defendants O'Rafferty, Kaiois, Flores, Avina, Meyers, and Ellis for negligence in violation of state law, as alleged in plaintiff's first amended complaint, those claims having been found to be cognizable in the magistrate judge's prior screening orders (Doc. Nos. 33, 39).

IT IS SO ORDERED.

Dated: January 7, 2018

  
UNITED STATES DISTRICT JUDGE