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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAVELL FRIERSON,
Plaintiff,
v.
U. OJEDA,
Defendant.

Case No. 1:14-cv-00553-LJO-SKO (PC)
**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING
DEFENDANT’S MOTION TO DISMISS,
AND REQUIRING DEFENDANT FO TILE
ANSWER WITHIN TEN DAYS**
(Docs. 14 and 20)

Plaintiff Lavell Frierson (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on April 18, 2014. This action is proceeding on Plaintiff’s claim for damages against Defendant Ojeda (“Defendant”) for endangering Plaintiff’s safety, in violation of the Eighth Amendment of the United States Constitution

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 30, 2015, the Magistrate Judge filed a Findings and Recommendations recommending Defendant’s Motion to Dismiss be denied. Fed. R. Civ. P. 12(b)(6). Defendant filed an Objection on October 14, 2015. Local Rule 304(b). Plaintiff did not respond. Local Rule 304(d).

At the pleading stage, Plaintiff’s allegations must be accepted as true and he must be afforded the benefit of any doubt. *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014); *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012); *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir.

1 2012). In this case, Plaintiff’s factual allegations are sufficient to permit him to proceed past the
2 pleading stage, which is a “low threshold.” *Wilhelm*, 680 F.3d at 1123; *see Lemire v. California*
3 *Dep’t of Corr. and Rehab.*, 726 F.3d 1062, 1074-78 (9th Cir. 2013) (discussing elements of Eighth
4 Amendment claim).¹ Defendant’s strenuous argument to the contrary is perplexing at best; and his
5 citation to a non-pro se civil case raising entirely different constitutional claims is unpersuasive, as
6 are his citations to an unpublished, factually distinguishable decision and two other factually
7 distinguishable decisions.²

8 Defendant may be assured that in accordance with the provisions of 28 U.S.C. §
9 636(b)(1)(C), the Court has conducted a *de novo* review of this case, and it has determined the
10 Findings and Recommendations to be supported by the record and by proper analysis.
11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The Findings and Recommendations, filed on September 30, 2015, is adopted in
13 full;
- 14 2. Defendant’s Motion to Dismiss, filed on July 8, 2015, is DENIED, with prejudice;
15 and
- 16 3. Defendant shall file an Answer within **ten (10) days** from the date of service of this
17 order.

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19 IT IS SO ORDERED.

20 Dated: November 13, 2015

/s/ Lawrence J. O’Neill
21 UNITED STATES DISTRICT JUDGE

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27 ¹ Compl., ¶¶5, 8, 14.

28 ² *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011); *Williams v. Wood*, 223 Fed.Appx. 670, 671 (9th Cir. 2007);
Morgan v. MacDonald, 41 F.3d 1291, 1294 (9th Cir. 1994); and *Avery v. Kernan*, 2006 WL 1795104 *2 (E.D.Cal.
2006).