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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KENNETH R. HENRY,
Plaintiff,
v.
MATTHEW CATE, et al.,
Defendants.

Case No. 1:14-cv-00791-LJO-SKO (PC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING
MOTIONS, AND REQUIRING
DEFENDANTS CONTRERAS AND
JOLLEY TO RESPOND TO COMPLAINT
WITHIN FIFTEEN DAYS
(Docs. 16, 23, 26, and 27)

Plaintiff Kenneth Henry (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on May 23, 2014. This action for damages is proceeding against Defendants Jolley,¹ Contreras, and Ortega (“Defendants”) for using excessive physical force against Plaintiff in 2013, 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 July 13, 2015, the Magistrate Judge filed a Findings and Recommendations recommending that Defendants’ motion to dismiss for failure to state a claim be denied. Defendants did not file any objections, and Plaintiff filed a statement of non-opposition on July 27, 2015. Local Rule 304(b).

¹ Identified as Jolly in the complaint.

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

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. The Findings and Recommendations, filed on July 13, 2015, is adopted in full;
- 6 2. Defendants' motion to strike new allegations in Plaintiff's opposition is DENIED;
- 7 3. Defendants' motion to strike Plaintiff's surreply is DENIED as moot;
- 8 4. Defendants' motion to dismiss for failure to state a claim, filed on May 6, 2015, is
9 DENIED; and
- 10 5. Defendants Contreras and Jolley shall file a response to Plaintiff's complaint within
11 **fifteen (15) days** from the date of service of this order.

12 IT IS SO ORDERED.

13 Dated: August 10, 2015

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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