

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

ISRRAEL ESPINOZA,  
Plaintiff,  
v.  
DIAZ,  
Defendant.

**Case No. 1:14-cv-00872-LJO-JLT (PC)**

**ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS TO GRANT  
DEFENDANT’S MOTION FOR SUMMARY  
JUDGMENT**

**(Docs. 11, 26)**

**ORDER DIRECTING CASE CLOSURE  
BY COURT CLERK**

Plaintiff, Israel Espinoza, is a state prisoner proceeding *pro se* and *in forma pauperis* with a civil rights action pursuant to 42 U.S.C. § 1983 which he filed on June 9, 2014. 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 November 18, 2015, the Magistrate Judge filed a Findings and Recommendations (“F&R”) which was served on the parties and contained notice that objections to the Findings and Recommendations were to be filed within thirty days. No objections were received so, on January 11, 2016, an order adopting the F&R issued and judgment was entered. (Docs. 27, 28.) Due to clerical error, the F&R was never mailed to Plaintiff so his motion to vacate judgment was granted. (Docs. 29, 32.) Plaintiff was thereafter granted time to file objections to the F&R with which he complied. (Docs. 32, 33.)

///

1 Plaintiff is proceeding on a claim of excessive force against Defendant based on  
2 allegations that while attempting to attend family visitation, Defendant harassed him and,  
3 ultimately, doused him with pepper spray. Due to the incident, prison officials found Plaintiff  
4 guilty of a rules violation report (“RVR”) and assessed on him 30 days loss of credit. Because  
5 Plaintiff failed to demonstrate compliance with the “favorable termination” requirement imposed  
6 by *Heck v. Humphrey*, 512 U.S. 477 (1994), *Edwards v. Balisok*, 520 U.S. 641, 643–647 (1997),  
7 the Magistrate Judge recommended granting Defendant’s motion for summary judgment. (Doc.  
8 26.)

9 In his objections, Plaintiff asserts that the events underlying the RVR and his claims of  
10 excessive force are two isolated factual contexts that took place in one continuous chain of events  
11 such that he need not obtain a favorable termination of the RVR on which he was found guilty  
12 before proceeding under § 1983. (Doc. 33.) Though Plaintiff cites cases with factually  
13 distinguishable scenarios, it is not the case here. The factual circumstances upon which  
14 Plaintiff’s excessive force claim is based also form the basis of the charges against him in the  
15 RVR. Plaintiff’s version of allegations differs with those in the RVR only in as much as Plaintiff  
16 alleges Defendant doused him with pepper-spray for no reason while the RVR indicates that  
17 Defendant used pepper-spray in response to Plaintiff taking an aggressive stance and refusing to  
18 follow an order. Plaintiff must demonstrate that the underlying RVR has been terminated in his  
19 favor before he may proceed on his claims under § 1983.

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

23 Accordingly, IT IS HEREBY ORDERED that:

- 24 1. The Findings and Recommendations, filed November 18, 2015 (Doc. 26), is  
25 adopted in full;
- 26 2. Defendant’s Motion to Dismiss, filed on October 7, 2014 (Doc. 11), which was  
27 converted to a Motion for Summary Judgment on July 21, 2015 (Doc. 21), is  
28 granted; and

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. The Clerk of the Court is directed to enter judgment against Plaintiff and in favor of Defendant A. Diaz, and close this case.

IT IS SO ORDERED.

Dated: September 15, 2016                      /s/ Lawrence J. O'Neill  
UNITED STATES CHIEF DISTRICT JUDGE