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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BINH TRAN,

Plaintiff,

v.

E. SMITH,

Defendant.

No. 1:14-cv-01320-DAD-EPG

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(Doc. Nos. 27, 35)

Plaintiff Binh Tran is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action filed pursuant to 42 U.S.C. § 1983 and with an attendant state law claim for common law negligence. This case now proceeds on plaintiff’s second amended complaint, filed on February 17, 2015, against defendant E. Smith on plaintiff’s Eighth Amendment and negligence claims. (Doc. Nos. 13, 21.) 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 August 19, 2016, defendant Smith filed a motion to dismiss for failure to state a claim. (Doc. No. 27.) On September 26, 2016, plaintiff filed an opposition to the motion. (Doc. No. 29.) On October 4, 2016, defendant filed a reply. (Doc. No. 30.)

On November 7, 2016, Magistrate Judge Erica P. Grosjean entered an order denying defendant Smith’s motion to dismiss. (Doc. No. 31.) On November 22, 2016, defendant Smith

1 filed a motion for reconsideration of that order by the district court. (Doc. No. 32.) On
2 November 23, 2016, Magistrate Judge Grosjean vacated the November 7, 2016 order (Doc. No.
3 34), and on November 28, 2016, entered findings and recommendations recommending that
4 defendant Smith's motion to dismiss be denied and that defendant Smith's motion for
5 reconsideration also be denied. (Doc. No. 35). The findings and recommendations provided the
6 parties with an opportunity to file objections to the findings and recommendations within thirty
7 days. (*Id.*) On December 20, 2016, defendant Smith filed objections to the findings and
8 recommendations. (Doc. No. 38.)¹

9 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this
10 court has conducted a de novo review of this case. Having carefully reviewed the entire file,
11 including the parties' responses thereto, the court finds the findings and recommendations to be
12 supported by the record and proper analysis.

13 Accordingly,

- 14 1. The November 28, 2016 findings and recommendations (Doc. No. 35) are adopted in
15 full;
- 16 2. Defendant Smith's motion to dismiss (Doc. No. 27) is denied;
- 17 3. Defendant Smith's motion for reconsideration (Doc. No. 32) is denied as having been
18 rendered moot by this order; and
- 19 4. This case is referred back to the magistrate judge for further proceedings consistent
20 with this order.

21 IT IS SO ORDERED.

22 Dated: April 4, 2017

23 
24 _____
25 UNITED STATES DISTRICT JUDGE

26
27 _____
28 ¹ On December 14, 2016, plaintiff filed an "opposition" to defendant's motion to dismiss. (Doc. No. 37.) The court will construe this document as a response to defendant's objections.