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5 **UNITED STATES DISTRICT COURT**

6 EASTERN DISTRICT OF CALIFORNIA
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9 MARK HODGE,) Case No. 1:15-cv-01618-AWI-BAM (PC)
10 Plaintiff,)
11 v.) ORDER ADOPTING FINDINGS AND
12 J. GONZALES, et al.,) RECOMMENDATIONS
13 Defendants.) (Doc. No. 27)
14) ORDER REGARDING DEFENDANTS'
15) MOTION TO DISMISS, (Doc. No. 17),
16) PLAINTIFF'S MOTION FOR LEAVE TO
17) AMEND FIRST AMENDED COMPLAINT,
) (Doc. No. 24), AND PLAINTIFF'S
) MOTION FOR SCHEDULING ORDER,
) (Doc. No. 23)
)

18 Plaintiff Mark Hodge ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*
19 *pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action currently proceeds
20 on Plaintiff's first amended complaint against Defendants Gonzalez and Flores for
21 unconstitutional conditions of confinement, against Defendant Gonzalez for excessive force, and
22 against Defendant Flores for failure to protect Plaintiff, all in violation of the Eighth
23 Amendment. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C.
24 § 636(b)(1)(B) and Local Rule 302.¹

25 On March 9, 2017, the assigned Magistrate Judge filed a findings and recommendations
26 ("F&R"), recommending that Defendants' motion to dismiss pursuant to Federal Rule of Civil
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28 ¹ Defendant Gonzalez was erroneously sued as "Gonzales."

1 Procedure 12(b)(6) be granted in part and denied in part. (Doc. No. 27.) Specifically, Defendants
2 moved to dismiss this action in its entirety on the grounds that the claims in Plaintiff's first
3 amended complaint are barred by the holdings of *Heck v. Humphrey*, 512 U.S. 477, 480 (1994),
4 and *Edwards v. Balisok*, 520 U.S. 641, 643 (1997). The Magistrate Judge recommended that
5 Plaintiff's Eighth Amendment excessive force claim against Defendant Gonzalez, and failure to
6 protect claim against Defendant Flores, be dismissed without prejudice as *Heck* barred, but that
7 the action continue to proceed on Plaintiff's claim against Defendants Gonzalez and Flores for
8 unconstitutional conditions of confinement in violation of the Eighth Amendment. The
9 Magistrate Judge also recommended that Plaintiff's motion for leave to amend the first amended
10 complaint and motion for a scheduling order both be denied.

11 The parties were provided an opportunity to file objections to the findings and
12 recommendations within fourteen days. More than fourteen days have passed, and no objections
13 were filed.

14 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this
15 Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the
16 Court finds that the F&R is supported by the record and proper analysis.

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18 ORDER

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. The findings and recommendations filed by the assigned magistrate judge on March 9,
21 2017 (Doc. No. 27), are ADOPTED IN FULL;
- 22 2. Defendants' motion to dismiss, filed May 10, 2016 (Doc. No. 17), is GRANTED IN
23 PART and DENIED IN PART;
- 24 3. Plaintiff's Eighth Amendment excessive force claim against Defendant Gonzalez, and
25 failure to protect claim against Defendant Flores, are DISMISSED, without prejudice, as
26 *Heck*-barred;
- 27 4. Plaintiff's motion for leave to amend the first amended complaint, filed August 15, 2016
28 (Doc. No. 24), is DENIED;

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5. Plaintiff's motion for scheduling order, filed July 25, 2016 (Doc. No. 23), is DENIED;

6. This action proceeds only on Plaintiff's claim against Defendants Gonzalez and Flores for unconstitutional conditions of confinement in violation of the Eighth Amendment; and

7. This matter is referred back to the assigned Magistrate Judge for proceedings consistent with this order.

IT IS SO ORDERED.

Dated: March 29, 2017



SENIOR DISTRICT JUDGE