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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM FABRICIUS,

Plaintiff,

v.

TULARE COUNTY, *et al.*,

Defendants.

Case No. 1:15-cv-01779-LJO-EPG

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS THAT
DEFENDANTS’ MOTIONS TO DISMISS BE
GRANTED IN PART AND DENIED IN PART

(ECF Nos. 78, 88, 106)

William Fabricius (“Plaintiff” or “William”), proceeding *pro se* and *in forma pauperis*, commenced this action against numerous defendants alleging claims under 42 U.S.C. § 1983 in connection with the seizure of twenty-five dogs. This action is now proceeding on Plaintiff’s Third Amended Complaint (“3AC”). The matter was referred to United States Magistrate Judge Erica P. Grosjean pursuant to 28 U.S.C. § 636(b)(1)(B).

On September 29, 2017, Paul Grenseman filed a motion to dismiss the claims against him. (ECF No. 88). On September 1, 2017, the remaining defendants who have appeared filed a motion to dismiss this action. (ECF No. 78).

On March 16, 2018, Magistrate Judge Grosjean issued findings and recommendations that all claims against Valeriano Saucedo, Thomas Elliott Hornburg, Ralph Mario Agnello, Cecile F. Shaffer, Kathleen Marie Bales-Lange, Lisa Marie Tennenbaum, and Zendajas, who have not been served in this action, should be dismissed with prejudice pursuant to 28 U.S.C. §1915(e)(2)(B); and Defendants’ motions to dismiss, (ECF Nos. 78, 88), should be granted as to all remaining claims and defendants, except Tulare County Sheriff Officers Bradley McLean and Lance Heiden

1 for unreasonable force in violation of the Fourth Amendment. (ECF No. 106). The findings and
2 recommendations were served on the parties with instructions that any objections must be filed
3 within twenty-one days.

4 On March 20, 2018, Defendants filed objections to the findings and recommendations,
5 raising the affirmative defense that the claims of unreasonable force are barred by the applicable
6 statute of limitations. (ECF No. 107). On April 9, 2018, Plaintiff filed his objections to the
7 findings and recommendations. (ECF No. 108).

8 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a
9 *de novo* review of this case. Having carefully reviewed the entire file, including Plaintiff's
10 objections and Defendants' objections, the Court finds the findings and recommendations to be
11 supported by the record and by proper analysis. In their Objections, Defendants argue for the first
12 time that Plaintiff's excessive force claim is barred by the statute of limitations. The Court
13 declines to address that newly-raised defense at this time.

14 Accordingly, it is HEREBY ORDERED that:

- 15 1. All claims against Valeriano Saucedo, Thomas Elliott Hornburg, Ralph Mario
16 Agnello, Cecile F. Shaffer, Kathleen Marie Bales-Lange, Lisa Marie Tennenbaum,
17 and Zendajas, who have not been served in this action, are dismissed with
18 prejudice pursuant to 28 U.S.C. §1915(e)(2)(B);
- 19 2. Defendants' motions to dismiss, (ECF Nos. 78, 88), are granted as to all remaining
20 claims and defendants, except Tulare County Sheriff Officers Bradley McLean and
21 Lance Heiden for unreasonable force in violation of the Fourth Amendment; and
- 22 3. This action is referred back to the assigned magistrate judge for further
23 proceedings.

24
25 IT IS SO ORDERED.

26 Dated: May 10, 2018

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