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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ISAIAH JOEL PETILLO,
Plaintiff,
v.
J.L. PETERSON, et al.,
Defendants.

CASE NO. 1:16-cv-00488-AWI-MJS (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DISMISS NON-
COGNIZABLE CLAIMS**

(ECF No. 44)

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. 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 22, 2016, the Court screened Plaintiff's first amended complaint (ECF No. 9) and found it states an Eighth Amendment excessive force claim against CO Gonzalez and CO Harris in their individual capacities, and a First Amendment retaliation claim against Lt. Lopez in his individual capacity. (ECF No. 14.) Plaintiff's official capacity claims were dismissed with prejudice.

On February 23, 2018, the Magistrate Judge re-screened Plaintiff's complaint, recognizing that a recent Ninth Circuit opinion, Williams v. King, 875 F.3d 500 (9th Cir.

1 2017), held that a magistrate judge does not have jurisdiction to dismiss claims with
2 prejudice in screening prisoner complaints absent the consent of all parties, even if the
3 plaintiff has consented to magistrate judge jurisdiction, as plaintiff had here. (ECF No.
4 44.) Concurrently, the Magistrate Judge issued findings and recommendations
5 recommending that the undersigned dismiss the non-cognizable claims. (Id.) The parties
6 were given fourteen days to file objections to those findings and recommendations. No
7 objections were filed, and the time in which to do so has now passed.

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

12 Accordingly, it is HEREBY ORDERED that:

- 13 1. The findings and recommendations issued February 23, 2018 are adopted
14 in full;
- 15 2. This action shall continue to proceed only on Plaintiff's Eighth Amendment
16 excessive force claim against CO Gonzalez and CO Harris in their
17 individual capacities;¹ and
- 18 3. All other claims and defendants are dismissed with prejudice.

19 IT IS SO ORDERED.

20 Dated: March 22, 2018

21 
22 SENIOR DISTRICT JUDGE

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26 _____
27 ¹ The findings and recommendation also recommended that the action proceed against Lt.
28 Lopez in his individual capacity for a claim of first amendment retaliation. (See ECF No. 44.)
However, that claim has since been disposed of on summary judgment. (See ECF Nos. 35,
45.) Accordingly, although the claim was cognizable as pled, it is no longer at issue.