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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DELBERT J. SMITH,
Plaintiff,
v.
C. HERNANDEZ, et al.,
Defendants.

Case No.: 1:16-cv-01267-LJO-SAB (PC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING
PLAINTIFF’S MOTION FOR INJUNCTIVE
RELIEF, AND GRANTING DEFENDANTS’
AMENDED MOTION FOR SUMMARY
JUDGMENT
(Doc. Nos. 63, 86, 92)

Plaintiff Delbert J. Smith is appearing *pro se* and *in forma pauperis* in this action pursuant to 42 U.S.C. § 1983. He proceeds on his First Amended Complaint against Defendants Hernandez, Flores-Alvarenga, Zuniga, and Cramer for excessive force in violation of the Eighth Amendment and retaliation in violation of the First Amendment, and against Defendant Hernandez for deliberate indifference in violation of the Eighth Amendment. (Doc. No. 32.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

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1 On June 20, 2018, Plaintiff filed a motion to compel, in which he sought a court order
2 directing non-defendant prison officials to return certain confiscated property to him. (Doc. No.
3 63.) Later, on November 6, 2018, Defendants filed an amended motion for partial summary
4 judgment, pursuant to Federal Rule of Civil Procedure 56. (Doc. No. 86.)

5 On December 27, 2018, the assigned Magistrate Judge issued findings and
6 recommendations, first construing Plaintiff's motion to compel as a motion for preliminary
7 injunction, and recommending that the motion be denied. (Doc. No. 92.) The Magistrate Judge
8 also recommended that Defendants' amended, partial summary judgment motion be granted, in
9 its entirety. Those findings and recommendations were served on the parties and contained
10 notice that any objections thereto were to be filed within thirty days. (*Id.* at 12-13.) Plaintiff
11 timely filed objections dated January 21, 2019. (Doc. No. 94.)

12 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this Court has conducted
13 a *de novo* review of the case. Having carefully reviewed the entire file, the Court concludes that
14 the findings and recommendations are supported by the record and by proper analysis.
15 Plaintiff's objections merely state that he stands by the allegations of his First Amended
16 Complaint and objects to the dismissal of any claim on summary judgment. The Court finds that
17 the Magistrate Judge properly addressed Plaintiff's opposition and that Defendants have met
18 their burden for partial summary judgment to be granted.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. The findings and recommendations issued on December 27, 2018, (Doc. No. 92), are
21 adopted in full;
- 22 2. Plaintiff's motion to compel, filed on June 20, 2018 (Doc. No. 63), is denied;
- 23 3. Defendants' amended motion for partial summary judgment, filed on November 6,
24 2018 (Doc. No. 86), is granted;
- 25 4. Plaintiff's claims against Defendant Zuniga for excessive force in violation of the
26 Eighth Amendment, and retaliation in violation of the First Amendment, are
27 dismissed with prejudice;

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- 1 5. Plaintiff's Eighth Amendment excessive force claim against Defendant Cramer is
2 dismissed, without prejudice, as barred by the favorable termination rule of *Heck v.*
3 *Humphrey*, 12 U.S. 477 (1994); and
4 6. This matter is referred back to the assigned Magistrate Judge for further proceedings
5 consistent with this order.

6
7 IT IS SO ORDERED.

8 Dated: January 25, 2019

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