

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JONATHAN L. DELL,
Plaintiff,
v.
R. ESPINOZA, et al.,
Defendants.

No. 1:16-cv-01769-DAD-MJS (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DISMISS
CERTAIN CLAIMS AND DEFENDANTS

(Doc. No. 46)

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 February 7, 2017, the assigned magistrate judge screened plaintiff's complaint and dismissed his claims based on allegations of medical indifference, use of excessively tight restraints, threats, and a cover-up against defendants Izahal, Celedon, Gallagher, Broomfield, Godwin, Davey, Arriola, Paskweitz, Yzaguirre, and Billings. (Doc. No. 9.) This case has since proceeded on plaintiff's remaining claims.

On August 21, 2017, the appearing defendants filed a motion for summary judgment due to plaintiff's failure to exhaust administrative remedies prior to filing suit as required. (Doc No. 36.) The magistrate judge issued findings and recommendations on December 29, 2017,

////

1 recommending that the motion for summary judgment be granted. (Doc No. 45.) Those findings
2 and recommendations remain pending before the court.

3 On January 10, 2018, the magistrate judge re-screened plaintiff's complaint, recognizing
4 that a recent Ninth Circuit opinion, *Williams v. King*, 875 F.3d 500 (9th Cir. 2017), held that a
5 magistrate judge does not have jurisdiction to dismiss claims with prejudice in screening prisoner
6 complaints absent the consent of all parties, including those named defendants who had not yet
7 appeared, even if the plaintiff has consented to magistrate judge jurisdiction as plaintiff had here.
8 (Doc. No. 46.) Concurrently, the magistrate judge issued findings and recommendations
9 recommending that plaintiff's claims previously found to be non-cognizable be dismissed. (*Id.*)
10 The parties were given fourteen days to file objections to those findings and recommendations.
11 No objections were filed and the time for doing so has passed.

12 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, the
13 court has conducted a *de novo* review of plaintiff's case. Having carefully reviewed the entire
14 file, the court finds the findings and recommendations to be supported by the record and by
15 proper analysis.

16 Accordingly:

- 17 1. The findings and recommendations issued January 10, 2018 (Doc. No. 46) are
18 adopted in full;
- 19 2. Plaintiff's claims against defendants Izahal, Celedon, Gallagher, Broomfield,
20 Godwin, Davey, Arriola, Paskweitz, Yzaguirre, and Billings are dismissed;¹ and

21 ////

22 ////

23 ////

24 ////

25 ¹ Although the conclusion to the findings and recommendations does not identify defendants
26 Yzaguirre and Billings by name (*see* Doc. No. 46 at 13), the court understands the findings and
27 recommendations to recommend dismissal of all defendants against whom plaintiff has failed to
28 state a cognizable claim. (*See id.* at 7 (“While Plaintiff has included allegations against
Defendants . . . CO Yzaguirre and CO Billings, none of them rise to the level of a constitutional
violation.”).)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. This action shall continue to proceed on plaintiff's Eighth Amendment excessive use of force claims against defendants Espinoza and Roque, failure to protect claim against defendant James, and deliberate indifference claims against defendants Barnett and Martinez.

IT IS SO ORDERED.

Dated: February 6, 2018


UNITED STATES DISTRICT JUDGE