

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TOY TERRELL SMITH,

Plaintiff,

V.

J. TORRES and M. HOGGARD,

Defendants.

Case No. 1:16-cv-01924-LJO-JDP

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS THAT
PLAINTIFF'S MOTION TO DISMISS BE
GRANTED AND THAT DEFENDANT
ACEBEDO'S MOTION FOR SUMMARY
JUDGMENT BE DENIED AS MOOT

(ECF No. 53)

Toy Terrell Smith (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action 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 20, 2018, the magistrate judge entered findings and recommendations, recommending that: (1) Plaintiff's motion to dismiss claims against J. Acebedo (ECF No. 52) be granted; (2) the claims against defendant J. Acebedo be dismissed without prejudice; and (3) Defendant J. Acebedo's motion for summary judgment (ECF No. 39) be denied as moot. (ECF No. 53.) The parties given an opportunity to object to the findings and recommendations. (See *id.*) No objections were filed.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Rule 304, this Court has conducted a de novo review of this case. Having carefully reviewed the entire file,

1 the Court finds the findings and recommendations to be supported by the record and proper
2 analysis.

3 Accordingly, IT IS ORDERED that:

4 1. The findings and recommendations issued by the magistrate judge on November
5 20, 2018 (ECF No. 53) are adopted in full;
6 2. Plaintiff's motion to dismiss claims against J. Acebedo (ECF No. 52) is granted;
7 3. The claims against defendant J. Acebedo are dismissed without prejudice; and
8 4. Defendant J. Acebedo's motion for summary judgment (ECF No. 39) is denied
9 as moot.

10 IT IS SO ORDERED.
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12 Dated: December 11, 2018 /s/ Lawrence J. O'Neill
13 UNITED STATES CHIEF DISTRICT JUDGE
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