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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANKIE L. GERMANY,
Plaintiff,
v.
M. COELHO,
Defendants.

No. 1:17-cv-00005-DAD-SAB (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
CERTAIN CLAIMS AND DEFENDANTS

(Doc. No. 12, 16, 34)

Plaintiff Frankie L. Germany is appearing pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

Plaintiff consented to United States Magistrate Judge jurisdiction under 28 U.S.C. § 636(c) on March 21, 2017. (Doc. No. 7.) To date, defendants have not consented or declined to United States magistrate judge jurisdiction.

On July 12, 2017, the assigned magistrate judge found that plaintiff's first amended complaint stated a cognizable claim for excessive force against defendants M Coelho, Garcia-Fernandez, P. Ward and Hanson. (Doc. No. 16.) The magistrate judge dismissed all other claims and defendants from the action for failure to state a cognizable claim for relief. (*Id.*) The magistrate judge indicated that jurisdiction existed under 28 U.S.C. § 636(c) based on the fact that

1 plaintiff had consented to magistrate judge jurisdiction and no other parties had yet appeared in
2 the action. (*Id.*)

3 Defendants filed an answer to the complaint on September 11, 2017.

4 On September 28, 2017, defendants filed a motion for summary judgment based on
5 plaintiff's failure to exhaust administrative remedies. On November 9, 2017, the magistrate judge
6 issued findings and recommendations recommending that defendants' motion for summary
7 judgment be granted and the action be dismissed, without prejudice, due to plaintiff's failure to
8 exhaust his administrative remedies prior to filing suit as required.¹

9 On November 9, 2017, the Ninth Circuit Court of Appeals held that 28 U.S.C. § 636(c)(1)
10 requires the consent of all named plaintiffs and defendants, even those not served with process,
11 before jurisdiction may vest in a magistrate judge to dispose of a civil case. *Williams v. King*, 875
12 F.3d 500, 504 (9th Cir. 2017). Therefore, on November 30, 2017, the magistrate judge issued
13 findings and recommendations recommending that this action proceed against defendants M
14 Coelho, Garcia-Fernandez, P. Ward and Hanson on plaintiff's claim for excessive use of force
15 and that all other claims and defendants be dismissed for failure to state a cognizable claim for
16 relief. Those findings and recommendations were served on the parties and contained notice that
17 objections were to be filed within fourteen days. No objections were filed and the time period to
18 do so has expired. In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule
19 304, the undersigned has conducted a de novo review of plaintiff's case. The undersigned
20 concludes the findings and recommendations are supported by the record and by proper analysis.

21 Accordingly,

- 22 1. The November 30, 2017 findings and recommendations are adopted in full;
- 23 2. For screening purposes only, plaintiff has stated a cognizable claim against defendants
24 M Coelho, Garcia-Fernandez, P. Ward and Hanson for excessive force; and

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27 ¹ On December 6, 2017, the court granted plaintiff thirty days to file objections to the November
28 9, 2017 findings and recommendations.

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3. All other claims and defendants are dismissed from the action for failure to state a cognizable claim.

IT IS SO ORDERED.

Dated: January 5, 2018

Dale A. Floyd
UNITED STATES DISTRICT JUDGE