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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TERRENCE MCCREA,
Plaintiff,
v.
J. HUBBARD, et al.,
Defendants.

No. 1:17-cv-00247-DAD-MJS
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
CERTAIN CLAIMS
(Doc. No. 29)

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. (Doc. No. 1.) Plaintiff consented to the jurisdiction of a United States Magistrate Judge over the action for all purposes pursuant to 28 U.S.C. § 636(c). (Doc. No. 6.) Defendant Denman has not consented to magistrate judge jurisdiction.

On June 27, 2017, the assigned magistrate judge issued a screening order directing plaintiff to either file an amended complaint or a notice of willingness to proceed only on his claim against defendant Denman which was found to be cognizable. (Doc. No. 8.) On July 17, 2017, plaintiff filed a first amended complaint. (Doc. No. 9.) On August 23, 2017, the magistrate judge screened plaintiff's first amended complaint and found that it stated only a cognizable claim against defendant Denman. (Doc. No. 10.) The magistrate judge found the claim against defendant Hubbard to be non-cognizable and dismissed that claim by order. (*Id.*)

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1 However, on November 9, 2017, the Ninth Circuit Court of Appeals ruled that 28 U.S.C. §
2 636(c)(1) requires the consent of all named plaintiffs and defendants, even those not served with
3 process, before jurisdiction may vest in a magistrate judge to dispose of a civil case. *Williams v.*
4 *King*, 875 F.3d 500, 504 (9th Cir. 2017). Accordingly, the magistrate judge lacked jurisdiction to
5 dismiss the above-described claims by way of the August 23, 2017 order. Therefore, on
6 December 12, 2017, the magistrate judge issued findings and recommendations recommending
7 that this action proceed only against defendant Denman and that defendant Hubbard be dismissed
8 for failure to state a cognizable claim for relief. The findings and recommendations were served
9 on the parties and contained notice that objections were to be filed within fourteen days. Plaintiff
10 filed a response indicating his “consent” to the magistrate judge’s findings and recommendations.
11 (Doc. No. 31.)

12 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, the
13 undersigned has conducted a de novo review of plaintiff’s case. In his initial complaint, plaintiff
14 alleges that defendant Hubbard intentionally jerked back plaintiff’s head and ordered him to look
15 up at the sun. In evaluating plaintiff’s complaint, the magistrate judge concluded that there were
16 insufficient facts alleged to establish an excessive force claim and directed plaintiff to include
17 more facts “supporting a claim...that Hubbard had no penological justification for ordering
18 plaintiff to put his head back and look at the sun and in physically acting to enforce that order and
19 that the force used was greater than reasonably necessary to enforce the order.” (Doc. No. 8 at 6.)
20 Plaintiff amended his complaint but did not add such facts. (Doc. No. 9.) As such, the
21 undersigned concludes the findings and recommendations are supported by the record and by
22 proper analysis.

23 Accordingly,

- 24 1. The findings and recommendations filed on December 12, 2017 (Doc. No. 29) are
25 adopted in full;

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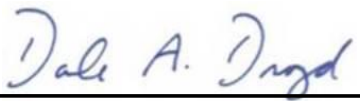
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- 2. Plaintiff's claim against defendant Hubbard is dismissed; and
- 3. This action shall proceed on the plaintiff's claim against defendant Denman.

IT IS SO ORDERED.

Dated: January 8, 2018


UNITED STATES DISTRICT JUDGE