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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER LIPSEY, JR.,

Plaintiff,

vs.

DR. REDDY, et al.,

Defendants.

) 1:17-cv-00569-LJO-BAM (PC)
)
) ORDER FINDING SERVICE OF
) COMPLAINT APPROPRIATE AGAINST
) CERTAIN DEFENDANTS, AND
) FORWARDING SERVICE DOCUMENTS
) TO PLAINTIFF FOR COMPLETION AND
) RETURN WITHIN **THIRTY DAYS**
)
) FINDINGS AND RECOMMENDATIONS
) RECOMMENDING DISMISSAL OF
) CERTAIN CLAIMS AND DEFENDANTS,
) WITH ANY OBJECTIONS DUE WITHIN
) **FOURTEEN DAYS**
)
)

Plaintiff Christopher Lipsey (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(1)(B) and Local Rule 302.

On June 6, 2017, the Court screened Plaintiff’s complaint filed on April 24, 2017, pursuant to 28 U.S.C. § 1915A, and found that it stated a cognizable claim for excessive force in violation of the Eighth Amendment against Defendants Hernandez, Celedon, and Mancilla for allegedly attacking Plaintiff on March 21, 2016. Fed. R. Civ. P. 8(a); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). The Court further found that Plaintiff failed to state any other cognizable claims. Plaintiff was ordered to either file

1 an amended complaint or notify the Court that he was willing to proceed only on the cognizable
2 claim. (ECF No. 9.)¹

3 On June 14, 2017, Plaintiff notified the Court that he did not intend to file any amended
4 complaint and wished to proceed only with the cognizable claims identified by the Court. (ECF
5 No. 11.) Thus, the Court finds it appropriate to order service of the complaint on Defendants
6 Hernandez, Caledon, and Mancilla. The Court will further recommend the dismissal of all other
7 claims and defendants for the failure to state a claim, for the reasons discussed in the June 6,
8 2017 screening order.²

9 Accordingly, IT IS HEREBY ORDERED as follows:

10 1. Service is appropriate for defendant:

11 **Correctional Officer R. Hernandez**

12 **Correctional Officer J. Mancilla**

13 **Correctional Officer S. Caledon**

14 2. The Clerk of the Court shall send to Plaintiff three (3) USM-285 forms, three (3)
15 summons, a Notice of Submission of Documents form, an instruction sheet and a
16 copy of the complaint, filed on April 24, 2017 (ECF No. 1);

17 3. Within **thirty (30) days** from the date of this Order, Plaintiff shall complete the
18 attached Notice of Submission of Documents and submit the completed Notice to the
19 Court with the following documents:

- 20 a. One completed summons for each of the defendants listed above;
21 b. One completed USM-285 form for each of the defendants listed above;
22 and

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24
25 ¹ The Court issued separate findings and recommendations regarding the dismissal, without prejudice, of
26 Plaintiff's other claims on the basis of improper venue. (ECF No. 10.) Those findings and
recommendations are still pending.

27 ² The Court is also in receipt of Plaintiff's information for the summons, that the Defendant Hernandez in
28 this matter has a first initial "R," has been a correctional officer for 29 years, and has a twin brother who
works at the institution. This information shall be passed on to the United States Marshal for use in
service of process, if necessary.

1 c. four (4) copies of the endorsed complaint, filed on April 24, 2017 (ECF
2 No. 1);

3 4. Plaintiff need not attempt service on the defendant and need not request waiver of
4 service. Upon receipt of the above-described documents, the Court will direct the
5 United States Marshal to serve the above-named defendant pursuant to Federal Rule
6 of Civil Procedure 4 without payment of costs;

7 5. **Plaintiff's failure to comply with this order will result in a recommendation that**
8 **this action be dismissed for failure to obey a court order and failure to**
9 **prosecute.**

10 ***

11 Also, the Court HEREBY RECOMMENDS that Plaintiff's claim for a violation of his
12 Fourth Amendment rights arising from a March 21, 2016 strip search be found not to be
13 cognizable, and be dismissed for failure to state a claim upon which relief may be granted.

14 These findings and recommendations will be submitted to the United States District
15 Judge assigned to the case, pursuant to the provision of 28 U.S.C. §636 (b)(1)(B). Within
16 **fourteen (14) days** after being served with these Finding and Recommendations, Plaintiff may
17 file written objections with the Court. The document should be captioned "Objections to
18 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
19 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.2d F.3d
20 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21
22 IT IS SO ORDERED.

23 Dated: June 19, 2017

24 /s/ Barbara A. McAuliffe
25 UNITED STATES MAGISTRATE JUDGE
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