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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEVONTE B. HARRIS,  
Plaintiff,  
v.  
CONNIE GIPSON, et al.,  
Defendants.

No. 1:17-cv-00640-DAD-SAB

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, PERMITTING  
ACTION TO PROCEED ON PLAINTIFF'S  
EXCESSIVE FORCE AND RETALIATION  
CLAIMS, AND DISMISSING DEFENDANTS  
GIPSON AND CATE FOR FAILURE TO  
STATE A CLAIM

(Doc. Nos. 13–15, 17)

Plaintiff Devonte B. Harris is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought 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 October 17, 2017, the assigned magistrate judge screened plaintiff's first amended complaint (Doc. No. 13) and directed plaintiff to either file a second amended complaint or notify the court of his intent to proceed only on those claims alleged in his first amended complaint which were found cognizable. (Doc. No. 14.) On October 27, 2017, plaintiff provided notice of his intent to proceed only on the claims set forth in his first amended complaint found to be cognizable. (Doc. No. 15.) On October 30, 2017, the magistrate judge therefore issued findings and recommendations, recommending that this action proceed against defendants Briones, Torres,

1 Silva and Hernandez on plaintiff's excessive use of force claim and against defendant Nail for  
2 retaliation in violation of the First Amendment. (Doc. No. 17.) Those findings and  
3 recommendations also recommended that all other claims and defendants be dismissed for failure  
4 to state a cognizable claim for relief. (*Id.*) The parties were provided fourteen days during  
5 which to file objections to those findings and recommendations. (*Id.*) To date, neither party has  
6 done so, and the time for doing so has now passed.

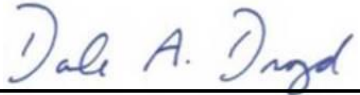
7 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a  
8 *de novo* review of this case. Having carefully reviewed the entire file, the court finds the findings  
9 and recommendations to be supported by the record and by proper analysis.

10 Accordingly,

- 11 1. The October 30, 2017 findings and recommendations (Doc. No. 17) are adopted in  
12 full;
- 13 2. This action shall proceed on plaintiff's excessive use of force claim against  
14 defendants Briones, Torres, Silva, and Hernandez, and against defendant Nail for  
15 retaliation in violation of the First Amendment;
- 16 3. Defendants Gipson and Cate, as well as plaintiff's prayer for declaratory relief are  
17 dismissed from this action for failure to state a cognizable claim; and
- 18 4. The matter is referred back to the assigned magistrate judge for initiation of  
19 service of process.

20 IT IS SO ORDERED.

21 Dated: December 20, 2017

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24 UNITED STATES DISTRICT JUDGE  
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