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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY LEE KING,
Plaintiff,
v.
R. VILLEGAS and P. CRUZ,
Defendants.

No. 1:17-cv-00676-AWI-EPG (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(ECF Nos. 106, 108, & 115)

ORDER DENYING DEFENDANTS’
MOTION FOR JUDGMENT ON THE
PLEADINGS AND GRANTING IN PART
PLAINTIFF’S MOTION FOR LEAVE TO
AMEND

Jerry King (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action filed 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 May 18, 2022, Defendants filed a motion for judgment on the pleadings, arguing that Plaintiff’s claims in this case are barred because they contradict the facts referred to in Plaintiff’s nolo contendere (no contest) plea to violating California Penal Code § 69 against two victims in state court. (ECF No. 106). On May 31, 2022, Plaintiff filed a motion for leave to amend, asking to add additional defendants and claims related to his medical care following the injuries from the incident at issue in this case. (ECF No. 108). On November 17, 2022, the assigned magistrate judge entered findings and recommendations, recommending that:

1. Defendants’ motion for judgment on the pleadings (ECF No. 106) be DENIED;

1 2. Plaintiff's motion for leave to amend (ECF No. 108) be GRANTED in part; and
2 3. Plaintiff's lodged amended complaint be filed in a separate case and Plaintiff's
3 Eighth Amendment claims for deliberate indifference to his medical needs against
4 defendants Registered Nurse Gant and Licensed Vocational Nurse Vitto proceed in
5 that other case, subject to screening.

6 (ECF No. 115, p. 18).

7 The parties were provided an opportunity to file objections to the findings and
8 recommendations. On November 30, 2022, Defendants filed their objections. (ECF No. 116).
9 Plaintiff did not object, but on December 12, 2022, he filed his reply to Defendants' objections
10 (ECF No. 117).

11 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
12 Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the
13 Court finds the findings and recommendations to be supported by the record and proper analysis.

14 Accordingly, IT IS ORDERED that:

- 15 1. The findings and recommendations issued on November 17, 2022, are adopted in
16 full;
- 17 2. Defendants' motion for judgment on the pleadings (ECF No. 106) is DENIED;
- 18 3. Plaintiff's motion for leave to amend (ECF No. 108) is GRANTED in part;¹
- 19 4. Plaintiff's lodged amended complaint shall be filed in a separate case and
20 Plaintiff's Eighth Amendment claims for deliberate indifference to his medical
21 needs against defendants Registered Nurse Gant and Licensed Vocational Nurse
22 Vitto proceed in that other case, subject to screening; and
- 23 5. The Clerk of Court is directed to:
 - 24 a. Open a new § 1983 action for Plaintiff.
 - 25 b. Assign a random magistrate judge to the action.
 - 26 c. File and docket a copy of the following in the newly opened action: Plaintiff's
27 original complaint (ECF No. 1); the order granting Plaintiff's application to
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¹ The Court is only granting Plaintiff's motion for leave to amend insofar as it is attempting to add Eighth Amendment claims against Grant and Vitto for failing to provide medical care after the alleged excessive force incident. To the extent that Plaintiff is attempting to add additional claims against Defendants, Plaintiff's motion is denied.

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proceed *in forma pauperis* (ECF No. 6); Plaintiff's Amended Complaint (ECF No. 92); the findings and recommendations issued on November 17, 2022 (ECF No. 115); and this order.

IT IS SO ORDERED.

Dated: April 26, 2023



SENIOR DISTRICT JUDGE