

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT C. WILLIAMS,
Plaintiff,
v.
GERARDO ALCALA, et al.,
Defendants.

No. 1:17-cv-00916-DAD-SAB (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
CERTAIN CLAIMS

(Doc. Nos. 1, 8, 10, 11, 17)

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

Pursuant to 28 U.S.C. § 636(c), plaintiff consented to the jurisdiction of a United States Magistrate Judge on August 14, 2017. Local Rule 302. To date, defendants have not consented to or declined to consent to magistrate judge jurisdiction.

On August 22, 2017, the assigned magistrate judge screened plaintiff's complaint and found that it stated a cognizable claim for damages against defendants Alcala and Garza for the use of excessive force but failed to state cognizable state law claims for assault and battery for failure to comply with the California Tort Claims Act. (Doc. No. 8.) Plaintiff was directed to

1 either file a first amended complaint or notify the court of his intent to proceed only on the claims
2 found to be cognizable. (*Id.*)

3 On September 1, 2017, plaintiff notified the court of his intent to proceed only on the
4 claims found to be cognizable. (Doc. No. 10.) Therefore, September 6, 2017, the magistrate
5 judge found that service was appropriate as to plaintiff's claims for monetary damages against
6 defendants Alcala and Garza on the use of excessive force claim. (Doc. No. 11.) The magistrate
7 judge dismissed all other claims for failure to state a cognizable claim for relief. (*Id.*) In that
8 order the magistrate judge indicated that jurisdiction existed under 28 U.S.C. § 636(c) based on
9 the fact that plaintiff had consented to magistrate judge jurisdiction and no other parties had yet
10 appeared in the action. (*Id.*)

11 On November 9, 2017, the Ninth Circuit Court of Appeals held that 28 U.S.C. § 636(c)(1)
12 requires the consent of all named plaintiffs and defendants, even those not served with process,
13 before jurisdiction may vest in a magistrate judge to dispose of a civil case. *Williams v. King*, 875
14 F.3d 500, 504 (9th Cir. 2017). Accordingly, the magistrate judge lacked jurisdiction to dismiss
15 defendant Adams from the action by way of the September 6, 2017 order. Therefore, on
16 December 1, 2017, the magistrate judge issued findings and recommendations recommending that
17 this action proceed against defendants Alcala and Garza for excessive use of force and that
18 plaintiff's state law claims and claim for declaratory relief be dismissed for failure to state a
19 cognizable claim for relief. Those findings and recommendations were served on the parties and
20 contained notice that objections were to be filed within fourteen days.

21 On December 15, 2017, defendants Alcala and Garza filed an answer to complaint. (Doc.
22 No. 20.)

23 On January 2, 2018, plaintiff filed objections to the December 1, 2017 findings and
24 recommendations. (Doc. No. 23.) In his objections, plaintiff contends that had he known the
25 case would have been assigned to a District Judge, he would have sought to further amend the
26 complaint. Plaintiff's contention in this regard is unfounded. In the August 22, 2017, screening
27 order the magistrate judge found that plaintiff stated a cognizable Eighth Amendment claim for
28 excessive use of force against defendants Alcala and Garza, but failed to state a cognizable claim

1 for assault and battery under state law for failure to plead the necessary compliance with the
2 California Tort Claims Act. (Doc. No. 8.) Nothing in plaintiff's objections demonstrates that he
3 is able to plead compliance with the California Tort Claims Act and he has failed to demonstrate
4 good cause to grant him leave to amend his complaint. (Doc. No. 23.) The mere fact that the
5 case is now assigned to a district judge for review does not demonstrate good cause to amend the
6 complaint.

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, including plaintiff's
9 objections, the court finds the findings and recommendations to be supported by the record and
10 by proper analysis.

11 Accordingly,

- 12 1. The December 1, 2017 findings and recommendations are adopted in full;
- 13 2. This action shall continue to proceed for monetary damages on plaintiff's claim of
14 excessive use of force in violation of the Eighth Amendment against defendants
15 Alcala and Garza; and
- 16 3. Plaintiff's state law claims of assault and battery and claim for declaratory relief are
17 dismissed from the action for failure to state a cognizable claim for relief.

18 IT IS SO ORDERED.

19 Dated: January 5, 2018

20 
UNITED STATES DISTRICT JUDGE