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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DARRYL BURGHARDT,
Plaintiff,
v.
L. BORGES, et al.,
Defendants.

1:17-cv-01433-AWI-GSA-PC

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(ECF No. 18.)**

**ORDER DISMISSING PLAINTIFF’S MEDICAL
AND EXCESSIVE FORCE CLAIMS FOR
FAILURE TO STATE A CLAIM, WITH LEAVE
TO AMEND; AND DISMISSING ALL OTHER
CLAIMS AS UNRELATED UNDER RULE 18(a),
WITHOUT PREJUDICE TO FILING NEW
CASES TO BRING THE UNRELATED CLAIMS
(ECF No. 13.)**

Darryl Burghardt (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action 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 July 18, 2019, the court entered [findings and recommendations](#), recommending that Plaintiff’s claims against defendants C/O Borges, C/O Renteria, Sergeant F. Montoya, D. Osuma (LVN), C/O J. Gomez, and Gonzales (LVN) be dismissed from this action for failure to state a claim under § 1983, with leave to amend, and that Plaintiff’s claims against the remaining

1 defendants be dismissed from this action as unrelated claims, in violation of Rule 18(a), without
2 prejudice to filing new cases to bring these claims. (ECF No. 18.) On July 31, 2019, Plaintiff
3 filed [objections](#) to the findings and recommendations. (ECF No. 19.)

4 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this
5 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file,
6 including Plaintiff's objections, the court finds the findings and recommendations to be supported
7 by the record and proper analysis. Although Plaintiff has identified some errors within the
8 Findings and Recommendation, Plaintiff's objections do not undermine the legal analysis of the
9 Findings and Recommendation. The Court agrees with the Findings and Recommendation that
10 the First Amended Complaint violates Rule 18 and that the claims that do not violate Rule 18 are
11 not plausibly pled claims under the *Iqbal* standard. The Findings and Recommendation
12 sufficiently explains what additional factual information is needed to meet the *Iqbal* standard.
13 Therefore, because the errors identified are not sufficiently material, the Court will adopt the
14 Findings and Recommendation.

15 Accordingly, THE COURT HEREBY ORDERS that:

- 16 1. The findings and recommendations issued by the Magistrate Judge on July 18,
17 2019, are ADOPTED;
- 18 2. Plaintiff's claims for excessive force, assault, and battery against defendants
19 Borges and Renteria, and for inadequate medical care against defendants
20 Montoya, Osuma, Gomez, and Gonzales are dismissed from this action for failure
21 to state a claim under § 1983, with leave to amend;
- 22 3. Plaintiff's claims for retaliation, conspiracy, improper processing of appeals,
23 improper RVR hearings, verbal threats and harassment, due process violations,
24 adverse conditions of confinement, interference with mail, cover-up, and making
25 false reports are dismissed from this action as unrelated claims, in violation of
26 Rule 18(a), without prejudice to filing new cases to bring these claims;
- 27 4. Defendants C/O J. Guerrero, K. Cribbs (Appeals Coordinator), D. Goree (CCII),
28 Captain R. Broomfield, Lt. A.V. Johnson, Sergeant T. Candia, Lt. A. Delacruz, J.

1 C. Smith (Associate Warden), Sergeant D. B. Hernandez, Lt. J. E. Silva, A.
2 Pacillas (CCII), Captain R. Pimentel (Appeals Examiner), C. Hammond (Appeals
3 Examiner), and J. A. Zamora (Chief Appeals Coordinator) are dismissed from this
4 case based on Plaintiff's violation of Rule 18(a), without prejudice to filing new
5 cases against them;

6 5. The Clerk is directed to reflect the dismissal of defendants Guerrero, Cribbs,
7 Goree, Broomfield, Johnson, Candia, Delacruz, Smith, Hernandez, Silva,
8 Pacillas, Pimentel, Hammond, and Zamora from this case on the court's docket;
9 and

10 6. This case is referred back to the Magistrate Judge for further proceedings.

11 IT IS SO ORDERED.

12 Dated: August 20, 2020

13 
14 SENIOR DISTRICT JUDGE