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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARK SHANE THOMPSON,
Plaintiff,
v.
A. GOMEZ, et al.,
Defendants.

Case No. 1:18-cv-00125-JLT-SAB (PC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO GRANT IN PART
AND DENY IN PART DEFENDANTS'
MOTION TO STRIKE SURREPLY AND
GRANT IN PART AND DENY IN PART
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT
(Docs. 84, 94, 99)

The assigned magistrate judge issued findings and recommendations to grant the Defendants' motion for summary judgment (Doc. 84) as to Plaintiff's excessive force and failure to intervene claims against Defendant Johnson arising from the escort¹. The magistrate judge also recommended the court deny Defendants' motion for summary judgment in all other respects, due to the existence of material disputed facts as to the need, degree, and motivation for the extent of the force used during the takedown incident. The magistrate judge also recommended the court grant the motion to strike as to the unauthorized surreply (Doc. 99) but to deny it as to Plaintiff's evidence addendum (Docs. 92, 93).

The court granted the parties 21 days to object to the findings and recommendations. (Doc. 99 at 27.) In addition, the court advised the parties that the "failure to file objections within the specified time may result in the waiver of rights on appeal." (*Id.*, citing *Wilkerson v. Wheeler*,

¹ Plaintiff does not oppose the court granting the motion to this extent.

1 772 F.3d 834, 839 (9th Cir. 2014); *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991).) No
2 objections were filed, and the time to do so has expired.

3 According to 28 U.S.C. § 636(b)(1)(C), the Court has conducted a *de novo* review of the
4 case. The court finds that the recommendation is supported by the record and proper analysis.

5 Thus, the Court **ORDERS**:

6 1. Defendants' motion to strike Plaintiff's surreply (Doc. 94) is **GRANTED** in part
7 and **DENIED** in part as follows:

8 a. Defendants' motion is **GRANTED** as to Plaintiff's surreply (Doc. 91).

9 b. Defendants' motion is **DENIED** as to Plaintiff's evidence addendum (Docs.
10 92, 93).

11 c. Plaintiff's unauthorized surreply to the motion for summary judgment (Doc.
12 91) is **STRICKEN**.

13 2. Defendants' motion for summary judgment (Doc. 84) is **GRANTED** in part and
14 **DENIED** in part as follows:

15 a. Defendants' motion is **GRANTED** as to Plaintiff's excessive force and
16 failure to intervene claim against Johnson arising from the escort.

17 b. Defendants' motion is **DENIED** in all other respects.

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19 IT IS SO ORDERED.

20 Dated: April 20, 2022

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UNITED STATES DISTRICT JUDGE