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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARCOS CASEY GUILLEN III,
Plaintiff,
v.
T. FRANCISCO,
Defendant.

No. 1:18-cv-00290-DAD-SAB

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING
DEFENDANT’S MOTION TO DISMISS,
AND DIRECTING DEFENDANT TO FILE A
RESPONSE WITHIN FOURTEEN DAYS
FROM THE DATE OF SERVICE OF THIS
ORDER

(Doc. Nos. 18, 21, 25)

Plaintiff Marcos Casey Guillen III is appearing *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983.

On September 17, 2018, the assigned magistrate judge issued findings and recommendations, recommending that defendant’s motion to dismiss (Doc. No. 18) be denied. (Doc. No. 21.) The findings and recommendations were served on the parties and contained notice that any objections were to be filed within twenty days after service. (*Id.*) After receiving an extension of time to do so, defendant filed objections on October 15, 2018. (Doc. No. 25.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, including defendant’s

1 objections, the undersigned finds the findings and recommendations to be supported by the record
2 and by proper analysis.

3 In his objections, defendant argues that he is entitled to qualified immunity because, at the
4 time of the alleged incident, it was not clearly established that touching a prisoner's medicine bag
5 incident to a search violated the First Amendment. The magistrate judge previously rejected this
6 precise argument, stating that "whether the evidence will support Plaintiff's assertions and
7 whether Defendant may be entitled to qualified immunity are questions that cannot be resolved at
8 this juncture." (Doc. No. 21 at 5) (citing cases). The undersigned agrees with this conclusion
9 here.

10 Accordingly,

- 11 1. The findings and recommendations issued on September 17, 2018 (Doc. No. 21)
12 are adopted in full;
- 13 2. Defendant's motion to dismiss this action (Doc. No. 18) is denied; and
- 14 3. Defendant shall file a further response to the complaint within fourteen (14) days
15 from the date of service of this order. Fed. R. Civ. P. 12(4)(A).

16 IT IS SO ORDERED.

17 Dated: December 4, 2018

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20 UNITED STATES DISTRICT JUDGE