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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JERRY DILLINGHAM,
Plaintiff,
vs.
J. GARCIA, et al.,
Defendants.

1:19-cv-00461-AWI-GSA-PC

**ORDER ADOPTING AMENDED
FINDINGS AND RECOMMENATIONS IN
FULL
(ECF No. 50.)**

**ORDER FOR THIS CASE TO PROCEED
AGAINST DEFENDANT J. GARCIA FOR
USE OF EXCESSIVE FORCE, FAILURE
TO PROTECT PLAINTIFF, AND
CONSPIRACY; AND DISMISSING ALL
OTHER CLAIMS AND DEFENDANTS FOR
FAILURE TO STATE A CLAIM**

Jerry Dillingham (“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 February 10, 2021, the court entered findings and recommendations, recommending that this action proceed only against defendant J. Garcia for use of excessive force. (ECF No. 43.) On March 4, 2021, Plaintiff filed objections to the findings and recommendations. (ECF No. 47.)

On March 15, 2021, the court amended the findings and recommendations, to recommend that this action proceed against defendant J. Garcia for use of excessive force, failure to protect Plaintiff, and conspiracy, and all other claims and defendants be dismissed from this action based

1 on Plaintiff's failure to state a claim. (ECF No. 50.) On July 19, 2021, Plaintiff filed objections.
2 (ECF No. 58.)

3 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this
4 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file,
5 including Plaintiff's objections, the court finds the amended findings and recommendations to be
6 supported by the record and proper analysis.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The amended findings and recommendations issued by the magistrate judge on
9 March 15, 2021, are adopted in full;
- 10 2. This case now proceeds with Plaintiff's Second Amended Complaint, filed on
11 September 8, 2020, against defendant J. Garcia for use of excessive force and
12 failure to protect Plaintiff, in violation of the Eighth Amendment, and for
13 conspiracy, but no other claims against any of the Defendants;
- 14 3. Plaintiff's claims for retaliation, violation of equal protection, violation of the
15 ADA, inadequate medical care, and state law claims, are dismissed based on
16 Plaintiff's failure to state a claim;
- 17 4. Defendants C/O J. Harmon, C/O D. Dozer, Sergeant B. Stane, Lieutenant A.
18 Sotelo, Warden C. Pfeiffer, C/O F. Garcia (father of C/O J. Garcia), S. Kernan
19 (CDCR Secretary), R. Soto (inmate), and Ralph Diaz (CDCR Secretary) are
20 dismissed for Plaintiff's failure to state any claims against them; and
- 21 5. This case is referred back to the Magistrate Judge for further proceedings,
22 including initiation of service of process.

23 IT IS SO ORDERED.

24 Dated: July 21, 2021

25 
26 SENIOR DISTRICT JUDGE
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