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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAMONT SHEPARD,
Plaintiff,
v.
S. GANNON, et al.,
Defendants.

No. 1:23-cv-01486-KES-EPG (PC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DISMISS
CERTAIN CLAIMS AND DEFENDANTS
(Doc. 23)

Lamont Shepard is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff’s complaint, as amended, alleges that, after he assisted another inmate with a prison grievance, prison officials began mistreating him, including using excessive force against him, retaliating against him, and denying him medical care. *See generally* Doc. 14. The matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Plaintiff filed his initial complaint on October 18, 2023, and a First Amended Complaint FAC on January 29, 2024. Docs. 1, 14. Plaintiff thereafter filed multiple requests to amend his complaint to add new claims and defendants, without attaching a proposed amended complaint. Docs. 15, 19. The court denied those motions and explained that a motion to amend needed to

1 include a Second Amended Complaint, and gave plaintiff leave to file an amended complaint.

2 Docs. 11, 16, 21. On March 14, 2024, the court issued an order stating in part:

3 The Court will give Plaintiff 30 days to file a motion for leave to
4 amend the complaint that includes a complete proposed Second
5 Amended Complaint. If within that time Plaintiff files a motion for
6 leave and proposed second amended complaint, the Court will screen
7 that second amended complaint. If Plaintiff fails to do so within 30
8 days, or once again asks to add defendants without providing a
9 proposed amended complaint in its entirety, the case will proceed on
10 Plaintiff's First Amended Complaint (ECF No. 14), which will be
11 subject to screening by the Court.

8 Doc. 21.

9 On March 22, 2024, Plaintiff filed a notice to proceed on his first amended complaint.

10 Doc 22. The assigned magistrate judge then screened the first amended complaint and issued
11 findings and recommendations on April 22, 2024, finding that plaintiff stated the following
12 cognizable claims:

- 13 a) excessive use of force claim against (1) Officer Gannon, (2) Officer Levinson,
14 (3) Sgt. Cody Williams, (4) Officer Jesse Diaz, and (5) Officer J. Rivas;
15 b) retaliation claim against (1) Officer Gannon, (2) Officer Levinson, and
16 (3) Lt. C. Martinez;
17 c) conspiracy claim against (1) Officer Gannon, (2) Officer Levinson, and
18 (3) Lt. C. Martinez; and
19 d) deliberate indifference to serious medical needs claim against Nurse Shantel
20 Reyna.

21 Doc. 23 at 21. The magistrate judge also recommended that “[a]ll other claims and Defendants
22 be dismissed without further leave to amend.” *Id.*

23 The findings and recommendations were served on plaintiff and notified him that any
24 objections were to be filed within thirty days after service. *Id.* The court advised him that
25 “failure to file objections within the specified time may result in the waiver of rights on appeal.”
26 *Id.* (citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014)). No objections have been
27 filed, and the deadline to do so has expired.

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1 In accordance with 28 U.S.C. § 636(b)(1), this court has conducted a de novo review of
2 this case. Having carefully reviewed the matter, the court finds the findings and
3 recommendations to be supported by the record and proper analysis.

4 Accordingly, IT IS ORDERED that:

- 5 1. The findings and recommendations issued on April 22, 2024 (Doc. 23), are
6 ADOPTED IN FULL;
- 7 2. This case shall PROCEED on the following claims:
 - 8 a) excessive use of force claim against (1) Officer Gannon, (2) Officer Levinson,
9 (3) Sgt. Cody Williams, (4) Officer Jesse Diaz, and (5) Officer J. Rivas;
 - 10 b) retaliation claim against (1) Officer Gannon, (2) Officer Levinson, and
11 (3) Lt. C. Martinez;
 - 12 c) conspiracy claim against (1) Officer Gannon, (2) Officer Levinson, and
13 (3) Lt. C. Martinez; and
 - 14 d) deliberate indifference to serious medical needs claim against Nurse Shantel
15 Reyna;
- 16 3. All other claims and defendants are DISMISSED for failure to state a claim upon
17 which relief may be granted;
- 18 4. This action is referred back to the assigned magistrate judge for proceedings consistent
19 with this order.
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22 IT IS SO ORDERED.

23 Dated: June 3, 2024



24 UNITED STATES DISTRICT JUDGE
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