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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN RODGERS,

Plaintiff,

No. CIV S-07-2269 WBS DAD P

vs.

JAMES TILTON, et al.,

Defendants.

ORDER

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Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 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 General Order No. 262.

On November 10, 2009, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty days. On December 2, 2009, plaintiff was granted an additional thirty days to file objections. The time period has now expired and neither party has filed objections to the findings and recommendations.

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1           The court has reviewed the file and finds the findings and recommendations to be  
2 supported by the record and by the magistrate judge's analysis. Accordingly, IT IS HEREBY  
3 ORDERED that:

4           1. The findings and recommendations filed November 10, 2009, are adopted in  
5 full; and

6           2. Defendants' March 10, 2009 motion to dismiss (Doc. No. 23) is granted in part  
7 and denied in part as follows:

8           a. Defendants' motion to dismiss plaintiff's complaint for failure to exhaust  
9 administrative remedies prior to filing suit as to his Eighth Amendment excessive use of force  
10 claim against defendant Pettigrew is denied;

11           b. Defendants' motion to dismiss plaintiff's complaint for failure to exhaust  
12 administrative remedies prior to filing suit as to his constitutional claims against defendants  
13 Moreno, Whitten, and Wyant and any constitutional claims against defendant Pettigrew, aside  
14 from his Eighth Amendment excessive use of force claim, is granted;

15           c. Defendants' motion to dismiss plaintiff's complaint for failure to state a claim  
16 for deliberate indifference under the Eighth Amendment against defendant Athanassious is  
17 denied;

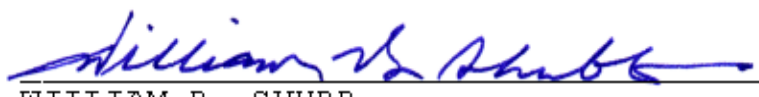
18           d. Defendants' motion to dismiss plaintiff's complaint for failure to state a claim  
19 for deliberate indifference under the Eighth Amendment against defendant Pettigrew is denied as  
20 unnecessary because such a claim is not presented by plaintiff;

21           e. Defendants Moreno, Whitten, and Wyant are dismissed from this action; and

22           f. Defendants Athanassious and Pettigrew are directed to file an answer to  
23 plaintiff's complaint within thirty days.

1 DATED: January 25, 2010

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WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE