

1 claims at bar arise from an incident on March 9, 2009 that led to plaintiff's arrest. Id. at 1-2
2 (quoting Order filed November 3, 2010). Plaintiff alleges, inter alia, that he was subjected to
3 excessive force when he was shot by one sheriff's deputy, "brought down" by the dog of
4 defendant Deputy B. Amos, kicked in the face and arms by defendant Amos, and struck several
5 times with the flashlight by a third sheriff's deputy. Plaintiff alleges that the defendant Amos
6 allowed the dog to "'chew on [plaintiff's] leg for no less than 45-50 seconds'" after he had been
7 handcuffed." Id. (quoting November 3, 2010 Order). Relying on Chuman v. Wright, 76 F.3d
8 292, 294-95 (9th Cir. 1996) and Boyd v. Benton County, 374 F.3d 773, 780 (9th Cir. 2004), the
9 magistrate judge concludes that plaintiff has not alleged "that defendant Rhalf was in any way a
10 participant in the conduct of the other officers and specifically alleges that he did nothing."
11 Findings and Recommendations (ECF No. 100) at 4.

12 This action is proceeding on plaintiff's first amended complaint, filed May 27, 2010. In
13 relevant part, plaintiff alleges as follows:

14 On March 9, 2009, at approx. 3:20 a.m., I, Anthony Jones, was the
15 victim of excessive use of force in several ways by several officers
of the law.

16 I was found to be hiding in a garden tool shed on someone's
17 property at 5125 Atlanta Way, Sacramento California. Although
18 'found' the officers did not know who was in the shed. A K-9 Unit
19 deputy's canine partner had alerted him (Brian Amos) to the
20 'presence of human order [sic]' approx. 90 min. into a search for a
black male wearing a red jacket and blue jeans. It was
21 approximately 3:15 am. when the canine alerted deputy B. Amos
that 'someone' is in the shed. Deputies D. Amos, E. McAtee,
Hrabak, Sgt. C. Turner (all of Sac. Co. Sherriff's [sic] Dept) and
Officer Ralf [sic] were all at the immediate scene to back up K-9
Unit B. Amos in an apprehension.

22 First Amended Complaint filed May 27, 2010 (ECF No. 11) at 1-2. After alleging that he was
23 subjected to several different types of force, including being chewed by the dog, plaintiff alleges
24 that he

25 I've named Officers Rhalf and Hrabaks as defendants because they
26 were witnesses to the excessive use of force and did nothing to
prevent or stop it.

27 Id. at 4. The doctrine of "integral participation" relied on by the magistrate judge "does not
28 require that each officer's actions themselves rise to the level of a constitutional violation."

1 Boyd, 374 F.3d at 780. Providing armed backup or participating in a police action with
2 knowledge that a particular form of force will be used without objecting to it may provide a basis
3 for liability under the integral participation analysis. See Boyd id.; see also Melear v. Spears, 862
4 F.2d 1177, 1186 (5th Cir. 1989) (cited in Boyd)(officer who provides armed back up at door while
5 another officer searches apartment is “a full, active participant in the search, not a mere
6 bystander.”)

7 Here, while it is not clear from the allegations of the amended complaint whether
8 defendant Rhalf was armed, plaintiff specifically alleges that defendant Rhalf was present to
9 back-up the K-9 Unit in apprehending a suspect. Liberally construed, the allegations of plaintiff’s
10 amended complaint are sufficient to suggest that defendant Rhalf was more than a mere bystander
11 in the events complained of.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. The findings and recommendations filed March 13, 2014, are not adopted;
- 14 2. Defendant Rhalf’s May 24, 2013 motion to dismiss (ECF No. 91) is
15 denied; and
- 16 3. This matter is referred back to the assigned magistrate judge for further
17 proceedings.

18 DATED: March 31, 2014.

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LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT