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

CD ALSTON,

Plaintiff,

No. 2:11-cv-2078 JAM GGH PS

vs.

PAUL TASSONE, et al.,

Defendants.

ORDER

_____ /

On June 22, 2012, the magistrate judge filed findings and recommendations herein which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within fourteen (14) days. No objections were filed. Accordingly, the court presumes any findings of fact are correct. See Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s conclusions of law are reviewed de novo. See Britt v. Simi Valley Unified School Dist., 708 F.2d 452, 454 (9th Cir. 1983).

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

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1. The findings and recommendations (dkt. no. 31) are ADOPTED IN FULL;

2. Defendants' motion to dismiss (dkt. no. 21) is GRANTED IN PART AND DENIED IN PART;

3. Defendants County of Sacramento, Sacramento County Sheriff Department, Jeana Zwolinski, Matt Morgan, and Scott Jones are DISMISSED WITH PREJUDICE from the action;

4. Plaintiff's claims against defendants Tassone and Smith are DISMISSED WITH PREJUDICE, with the exception of plaintiff's claims for (1) unlawful detention in violation of the Fourth Amendment under 42 U.S.C. § 1983; (2) unlawful search in violation of the Fourth Amendment under 42 U.S.C. § 1983; (3) excessive force in violation of the Fourth Amendment under 42 U.S.C. § 1983; (4) conspiracy to violate plaintiff's Fourth Amendment rights under 42 U.S.C. § 1983; (5) assault under California state law; and (6) intentional infliction of emotional distress under California state law (premised on the manner of plaintiff's detention only), as to which defendants' motion to dismiss is DENIED; and

5. Plaintiff shall file a second amended complaint in accordance with the magistrate judge's findings and recommendations (see in particular, docket number 31 at page 24) within 28 days of this order.

DATED: July 27, 2012

/s/ John A. Mendez
UNITED STATES DISTRICT COURT JUDGE