

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARTIN WARE,

 Plaintiff,

 v.

M. McDONALD, et al.,

 Defendants.

No. 2:12-cv-1505-TLN-KJN P

ORDER

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 Rule 302.

On February 8, 2017, 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 fourteen days. Plaintiff has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the findings and recommendations to be supported by the record and by proper analysis.

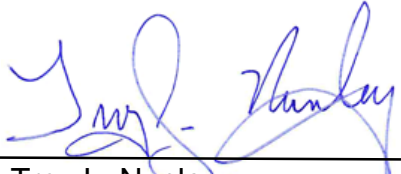
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed February 8, 2017, are adopted in full;
2. Plaintiff's motion for partial summary judgment (ECF No. 97) is denied;
3. Defendants' motion for summary judgment (ECF No. 96) is granted in part and denied in part, as follows:
 - a. All Defendants are entitled to summary judgment on Plaintiff's claim that Defendants failed to protect him in violation of his Eighth Amendment;
 - b. Defendants Tancreto and Green are granted summary judgment on Plaintiff's excessive force claims; and
 - c. The motion for summary judgment by Defendants Holt, Giessner and Glover, on Plaintiff's excessive force claims are denied;
4. Defendants Green, Tancreto, Hanks and Fackrell are dismissed from this action with prejudice; and
5. This matter is remanded to the Magistrate Judge for further scheduling.

Dated: March 31, 2017



Troy L. Nunley
United States District Judge