UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIC ZACHARY ANDERSON,

Plaintiff,

v.

TIM VIRGA, et al.,

Defendants.

No. 2:15-cv-1148-KJM-EFB 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 March 29, 2017, the magistrate judge filed findings and recommendations recommending that a motion to dismiss filed by defendant Villasenor be granted and that plaintiff be given leave to file a second amended complaint to clarify the basis for his excessive force claim against defendant Villasenor. The findings and recommendations were served on all parties and contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Neither party has filed objections to the findings and recommendations. Plaintiff filed his second amended complaint on May 2, 2017. ECF No. 46.

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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:

1. Except as modified by this order, the findings and recommendations filed March 29, 2017, are adopted in full;

2. Defendant Villasenor's motion to dismiss, ECF No. 35, is granted;

3. The excessive force claim against defendant Villasenor raised in the first amended complaint, ECF No. 23, is dismissed with leave to amend;

4. In view of the fact that plaintiff has filed a second amended complaint, ECF No. 46, the recommendation that plaintiff be granted thirty days to amend his claim against defendant Villasenor is moot; and

5. This matter is referred back to the assigned magistrate judge for further proceedings.

DATED: June 12, 2017.

UNITED STATES DISTRICT JUDGE