

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

JOHN HARDNEY,

Plaintiff,

v.

R. WARREN, et al.,

Defendants.

No. 2:16-cv-0172-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 as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 12, 2019, 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 days. ECF No. 82. Plaintiff did not file timely objections to the findings and recommendations. On January 15, 2020, this court adopted the findings and recommendations, dismissed the excessive force claims against defendants Pogue and Hickman and the failure to intervene claim against defendant Almodovar, and denied plaintiff’s request for injunctive relief. ECF No. 83.

On January 31, 2020, plaintiff notified the court he had been denied the opportunity to file objections to the December 12, 2019, findings and recommendations because he never received a copy of them. ECF No. 86. On February 12, 2020, the Clerk of the Court re-served a copy of the

1 findings and recommendations to plaintiff at his address of record. ECF No. 88. He has now
2 filed a “Motion to Vacate [the] Dismissal of Defendants Pogue, Hickman, and Almodovar.” ECF
3 No. 102. Defendants have opposed the motion. ECF No. 105. The court construes plaintiff’s
4 motion as belated objections to the findings and recommendations. In an abundance of caution,
5 the court will reconsider the order adopting the findings and recommendations in light of
6 plaintiff’s recently filed objections.

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

10 Accordingly, the order entered on January 15, 2020 (ECF No. 83), adopting in full the
11 findings and recommendations and dismissing the excessive force claims against defendants
12 Pogue and Hickman and the failure to intervene claim against defendant Almodovar and denying
13 plaintiff’s motion for injunctive relief, is CONFIRMED. The Clerk of the Court shall terminate
14 ECF No. 102.

15 In response to defendants’ response to plaintiff’s Motion to Vacate, ECF No. 105 at 1–2,
16 the court clarifies that plaintiff’s Motion for Reconsideration at ECF No. 86 is no longer pending,
17 as it was substantively resolved by the Minute Order at ECF No. 88, directing the Clerk of the
18 Court to re-serve a copy of the findings and recommendations on plaintiff. *See id.* To the extent
19 the Motion for Reconsideration is still pending, the court considers it resolved by the
20 confirmation of the January 15, 2020 order here.

21 IT IS SO ORDERED.

22 DATED: July 17, 2020.

23
24 
25 CHIEF UNITED STATES DISTRICT JUDGE
26
27
28