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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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KORDY RICE,  
  
                                Plaintiff,  
  
                  v.  
  
R. McCORD, C. DRAKE, and  
GOODRICH,  
  
                                Defendants.

No. 2:16-CV-0562 WBS DMC  
  
ORDER

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Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to Eastern District of California local rules.

On March 2, 2020, the Magistrate Judge filed findings and recommendations herein which were served on the parties and which contained notice that the parties may file objections within the time specified therein. Timely objections to the findings and recommendations have been filed.

1           In accordance with the provisions of 28 U.S.C. §  
2 636(b) (1) (C) and Local Rule 304(f), this Court has conducted a de  
3 novo review of this case. Having carefully reviewed the entire  
4 file, the Court finds the findings and recommendations to be  
5 supported by the record and by proper analysis, except to the  
6 extent discussed below.

7           In adopting the findings and recommendations, the court  
8 overrules defendants' objection that summary judgment is  
9 appropriate as to plaintiff's claim that he was dragged by  
10 defendants McCord and Drake. While the evidence supports a  
11 conclusion that any injury suffered by plaintiff was solely a  
12 result of his being slammed to the ground, plaintiff does not  
13 assert separate claims for being dragged and for being slammed to  
14 the ground. Rather, he asserts claims based on an alleged course  
15 of events, specifically being dragged along the floor by McCord  
16 and Drake for about fifteen feet, and then being slammed to the  
17 ground by defendant McCord after he stood up. (Compl. at 5  
18 (Docket No. 1).)

19           Moreover, whether defendant was dragged, and if so, in  
20 what matter, is a disputed issue of fact. (See, e.g., Pl.'s  
21 Reply to Defs.' Statement of Undisputed Facts (Docket No. 44. at  
22 ¶ 15 (disputing defendants' contentions that plaintiff was merely  
23 dragging his feet, at no time had his entire body on the ground,  
24 and did not appear to be in pain).) Given the disputed facts,  
25 summary judgment regarding plaintiff's alleged dragging by McCord  
26 and Drake is inappropriate.

27           This determination requires further examination of the  
28 findings and recommendations. The magistrate judge recommends

1 that summary judgment be granted in full in favor of defendant  
2 Drake. However, given the court's determination that summary  
3 judgment on the dragging incident is inappropriate, plaintiff may  
4 still proceed on his excessive force claim against Drake, who  
5 participated in that dragging with McCord. Accordingly, the  
6 court declines to adopt the findings and recommendations to the  
7 extent that the magistrate judge recommends dismissal of all  
8 claims against Drake. However, the court will adopt the findings  
9 and recommendations in all other respects.

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. Defendants' objections to the findings and  
12 recommendations are overruled.


13 2. The findings and recommendations filed March 2,  
14 2020 (Docket No. 49), are adopted to the extent they are  
15 consistent with this order.

16 3. Defendant Drake's motion for summary judgment (ECF  
17 No. 40) is granted in part. All claims against Drake are  
18 dismissed with the exception of plaintiff's Eighth Amendment  
19 excessive force claim.

20 4. Defendants Goodrich and McCord's motion for  
21 summary judgment (ECF No. 41) is granted in part. All claims  
22 against Goodrich are dismissed. All claims against McCord are  
23 dismissed with the exception of plaintiff's Eighth Amendment  
24 claim excessive force claim.

25 This action shall proceed solely on plaintiff's Eighth  
26 Amendment excessive force claim against defendants McCord and  
27 Drake.

28 Dated: June 9, 2020

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WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE