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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENJAMIN JUSTIN BROWNLEE,
Plaintiff,
v.
SCOTT JONES, et al.,
Defendants.

No. 2:17-cv-00872 CKD P

ORDER & FINDINGS AND
RECOMMENDATIONS

Plaintiff is a county jail inmate proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. On September 19, 2018, this court screened plaintiff's first amended complaint and found service appropriate only with respect to the Eighth Amendment claim of deliberate indifference against defendants Jackson, Thompson, James, Smith, Goings, Grinder, Gomez, and Schmenk. ECF No. 33. Plaintiff was given the option of proceeding with service of process as to these defendants or of filing a second amended complaint to try to fix the deficiencies with respect to the additional claims and defendants.

On October 9, 2018, plaintiff filed a notice with the court indicating that he wanted to proceed only on the cognizable Eighth Amendment deliberate indifference claims. ECF No. 34. In light of plaintiff's election, the undersigned recommends dismissing the Eighth Amendment excessive force claims against defendants Gomez, Anderson, Thomas, James, Thompson, Jackson, Rose, Smith, Goings, Grinder, Schmenk, Anderson, Fray, and Blyst; the due process

1 claims against defendants Gayman, Yee, Hayz, Smolich, and Hernandez; the retaliation claim
2 against defendant Peoples; and, the harassment claim against defendant James. See ECF No. 33
3 at 5-7. Defendants Jones, Rosales, and Douglas should also be dismissed from this action based
4 on the failure to state any claim for relief against them in an individual or supervisory capacity.
5 See ECF No. 33 at 7.

6 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court randomly assign this
7 case to a district judge.

8 IT IS FURTHER RECOMMENDED that:

- 9 1. The remaining claims against defendants Jones, Hernandez, Gayman, Rosales,
10 Smolich, Anderson, Douglas, Rose, Peoples, Fry, Blyst, Yee and Hayz, and the verbal
11 harassment claim against defendant James be dismissed for failing to state a claim
12 upon which relief can be granted; and,
- 13 2. This case proceed only on the Eighth Amendment deliberate indifference claims
14 against defendants Jackson, Thompson, James, Smith, Goings, Grinder, Gomez, and
15 Schmenk.

16 These findings and recommendations are submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
18 after being served with these findings and recommendations, any party may file written
19 objections with the court and serve a copy on all parties. Such a document should be captioned
20 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
21 objections shall be served and filed within fourteen days after service of the objections. The
22 parties are advised that failure to file objections within the specified time may waive the right to
23 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 Dated: October 17, 2018

25 
26 CAROLYN K. DELANEY
27 UNITED STATES MAGISTRATE JUDGE