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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANNIE JAMES,
Plaintiff,
v.
J. PRICE, et al.,
Defendants.

No. 2:17-cv-1433 MCE CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff, a California prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. On November 27, 2017, the court granted plaintiff leave to file an amended complaint. Plaintiff has now filed his amended complaint.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

The court has conducted the required screening and finds that plaintiff’s amended complaint states a claim against defendant Austin upon which relief could be granted arising under the Eighth Amendment for excessive force as detailed in claim III of plaintiff’s amended complaint.

1 As for claim I, the allegations do not amount to anything more than negligence in
2 violation of California Law, and plaintiff does not plead compliance with the California Tort
3 Claims Act. See State v. Superior Court, 32 Cal.4th 1234, 1239 (Cal. 2004).

4 As for claim II, which concerns medical care, plaintiff fails to point to facts suggesting he
5 suffered injury as a result of deliberate indifference to serious medical needs. See Estelle v.
6 Gamble, 429 U.S. 97, 104-05 (1976).

7 For these reasons, the court will order defendant Austin to file his response to claim III in
8 plaintiff's amended complaint and recommend that the other defendants and claims be dismissed.
9 The court does not grant leave to file a second amended complaint, as the court already provided
10 plaintiff one opportunity to amend, and providing a second opportunity appears futile.

11 In accordance with the above, IT IS HEREBY ORDERED that defendant Austin file his
12 response to claim III in plaintiff's amended complaint within 30 days; and

13 IT IS HEREBY RECOMMENDED that all defendants other than defendant Austin, and
14 all claims other than claim III in plaintiff's amended complaint be dismissed.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
17 after being served with these findings and recommendations, plaintiff may file objections with the
18 court. Such a document should be captioned "Objections to Magistrate Judge's Findings and
19 Recommendations." Plaintiff is advised that failure to file objections within the specified time
20 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th
21 Cir. 1991).

22 Dated: July 9, 2018

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24 _____
25 CAROLYN K. DELANEY
26 UNITED STATES MAGISTRATE JUDGE