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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

EUGENE HAMILTON,

 Plaintiff,

 vs.

LARA, et al.,

 Defendants.

1:08-cv-01967-OWW-GSA-PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION
PROCEED ONLY AGAINST DEFENDANTS
GURRERO AND ARENIVAS, ON PLAINTIFF’S
EIGHTH AMENDMENT EXCESSIVE FORCE
CLAIMS, AND ALL OTHER CLAIMS AND
DEFENDANTS BE DISMISSED

OBJECTIONS, IF ANY, DUE IN 30 DAYS

_____ /

Plaintiff Eugene Hamilton (“plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The case now proceeds on the original complaint filed by plaintiff on December 29, 2008. (Doc. 1.) The complaint names more than thirty defendants and alleges claims for a number of acts, including retaliation, due process, inadequate medical care, excessive force, appeals process violations, and deprivation of yard time, showers, meals, and access to medications.

The Court screened plaintiff’s complaint pursuant to 28 U.S.C. § 1915A and found that it states cognizable claims for relief under section 1983 against defendants Gurrero and Arenivas, for excessive force in violation of the Eighth Amendment. On June 14, 2010, plaintiff was given leave to either file an amended complaint, or in the alternative, to notify the Court that he does not wish to file an amended

1 complaint and instead wishes to proceed only on the claims identified by the Court as cognizable in the
2 Court's order. (Doc. 12.) On June 21, 2010, plaintiff filed written notice to the Court that he wishes
3 to proceed only on the claims found cognizable by the Court. (Doc. 13.)

4 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 5 1. This action proceed only against defendants Gurrero and Arenivas, on plaintiff's Eighth
6 Amendment excessive force claims;
- 7 2. All remaining claims and defendants be dismissed from this action;
- 8 3. Plaintiff's claims against defendants Lara, Cohen, Braswell, Hicinbothom, Cano,
9 Quinones, Junious, Moon, Garnett, Wang, Labelle, Minn, Jalisman, McGuinness, Hall,
10 Grannis, Chrones, Adams, Tipton, Wilkins, Schutt, Schape, Doering, and Does 1-10 be
11 dismissed from this action based on plaintiff's failure to state any claims upon which
12 relief may be granted against them; and
- 13 4. Plaintiff's claims for retaliation, due process, inadequate medical care, appeals process
14 violations, equal protection, all acts occurring at Lancaster State Prison, claims for
15 injunctive relief, and deprivation of yard time, showers, meals, and access to medications
16 be dismissed for failure to state a claim upon which relief may be granted under section
17 1983.

18 These Findings and Recommendations will be submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days
20 after being served with these Findings and Recommendations, Plaintiff may file written objections with
21 the Court. The document should be captioned "Objections to Magistrate Judge's Findings and
22 Recommendations." Plaintiff is advised that failure to file objections within the specified time may
23 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24
25 IT IS SO ORDERED.

26 **Dated: June 23, 2010**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE