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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TRISTIN D. KING,  
Plaintiff  
v.  
JAMAR R. WILLIAMS,  
Defendant.

Case No. 2:20-cv-00209-DOC (GJS)

**ORDER ACCEPTING FINDINGS  
AND RECOMMENDATIONS OF  
UNITED STATES MAGISTRATE  
JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Complaint, all pleadings and other documents filed in this action, including the Report and Recommendation (Dkt. 21, "Report") of the assigned United States Magistrate Judge. No objections to the Report have been filed within the time allowed. Having completed its review, the Court accepts the findings and recommendations set forth in the Report.

Accordingly, **IT IS ORDERED** that:

(1) Defendant's Motion to Dismiss is **DENIED** in **PART** and **GRANTED** in **PART**, pursuant to Fed. R. Civ. P. 12(b)(6), as follows:

- (a) the Motion is **GRANTED** with respect to Plaintiff's First Amendment retaliation claim and this claim is dismissed with leave to amend;

1 (b) the Motion is GRANTED with respect to Plaintiff's Eighth  
2 Amendment Excessive Force claim and this claim is dismissed  
3 with leave to amend;

4 (c) the Motion is DENIED with respect to Plaintiff's Eighth  
5 Amendment Deliberate Indifference to Safety Claim; and

6 (2) Plaintiff is GRANTED leave to file a First Amended Complaint  
7 consistent with the Report and Recommendation and this Order or a notice of  
8 voluntary dismissal dismissing his defective claims within thirty (30) days of this  
9 Order;<sup>1</sup>

10 (3) If Plaintiff fails to file a First Amended Complaint this action will  
11 proceed solely on the remaining claim against Defendant Williams for an Eighth  
12 Amendment Deliberate Indifference to Safety violation.

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15 DATE: January 8, 2021



16 DAVID O. CARTER  
17 UNITED STATES DISTRICT JUDGE

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<sup>1</sup> If Plaintiff chooses to file a First Amended Complaint, Plaintiff must clearly designate on the face of the document that it is the "First Amended Complaint," it must bear the docket number assigned to this case, and it must be retyped or rewritten in its entirety, preferably on the court-approved form. Plaintiff shall not include new defendants or new allegations that are not reasonably related to the claims asserted in the FAC. In addition, the First Amended Complaint must be complete without reference to the Complaint, or any other pleading, attachment, or document. Alternatively, Plaintiff may voluntarily dismiss the defective claims against Defendant Williams without prejudice, pursuant to Federal Rule of Civil Procedure 41(a) and proceed solely on his deliberate indifference to safety claim. The Clerk of Court is directed to mail Plaintiff a blank Notice of Dismissal Form, which the Court encourages Plaintiff to use.