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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM BRADLEY,
Plaintiff,
vs.
J. VILLA, et al.,
Defendants.

1:10-cv-01618-LJO-GSA-PC
FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION
PROCEED ONLY AGAINST DEFENDANT
VILLA FOR USE OF EXCESSIVE FORCE IN
VIOLATION OF THE EIGHTH
AMENDMENT, AND THAT ALL OTHER
CLAIMS AND DEFENDANTS BE
DISMISSED
OBJECTIONS, IF ANY, DUE IN 20 DAYS

William Bradley (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on September 8, 2010. (Doc. 1.) This case now proceeds on the Third Amended Complaint filed by Plaintiff on September 14, 2012. (Doc. 19.) The Third Amended Complaint names as defendants Correctional Officer J. Villa for use of excessive force in violation of the Eighth Amendment, and defendants Sergeant J. Hightower, Lieutenant S. Henderson, and Captain Wood (collectively, four “Defendants”) for failure to intercede and protect Plaintiff, in violation of the Eighth Amendment. (Id.)

On May 29, 2014, the court granted in part Defendants’ motion to dismiss for failure to state a claim. (Doc. 46.) Plaintiff was granted leave to either file an amended complaint or notify the court that he is willing to proceed only on the claim found cognizable by the court

1 against defendant Villa for use of excessive force. (Id.) On June 23, 2014, Plaintiff filed a
2 notice informing the court that he does not wish to file an amended complaint and is willing to
3 proceed only on the excessive force claim against defendant Villa. (Doc. 47.)

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

- 5 1. This action proceed only against defendant Villa on Plaintiff's claim for use of
6 excessive force in violation of the Eighth Amendment;
- 7 2. All remaining claims and defendants be dismissed from this action;
- 8 3. Defendants Hightower, Henderson, and Wood be dismissed from this action
9 based on Plaintiff's failure to state any claims upon which relief may be granted
10 against them; and
- 11 4. Plaintiff's claims for failure to protect him be dismissed from this action based
12 on Plaintiff failure to state a claim upon which relief may be granted under §
13 1983.

14 These Findings and Recommendations will be submitted to the United States District
15 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
16 **twenty (20)** days after being served with these Findings and Recommendations, any party may
17 file written objections with the Court. The document should be captioned "Objections to
18 Magistrate Judge's Findings and Recommendations." Any response to the objections is due
19 within ten (10) days of the date of service of the objections. The parties are advised that failure
20 to file objections within the specified time may waive the right to appeal the District Court's
21 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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23 IT IS SO ORDERED.

24 Dated: June 25, 2014

/s/ Gary S. Austin
25 UNITED STATES MAGISTRATE JUDGE
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