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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA
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8 WILLIE PAUL VIGIL, JR.,

9 Plaintiff,

10 vs.

11 WARDEN JAMES A. YATES, et al.,

12 Defendants.
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1:10-cv-01977-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION
PROCEED ONLY AGAINST DEFENDANTS
VALENCIA AND DIAZ FOR USE OF
EXCESSIVE FORCE, AND DEFENDANT
VALENCIA FOR RETALIATION, AND
THAT ALL OTHER CLAIMS AND
DEFENDANTS BE DISMISSED

OBJECTIONS, IF ANY, DUE IN 20 DAYS

15 Willie Paul Vigil, Jr. ("Plaintiff") is a state prisoner proceeding pro se and in forma
16 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
17 commencing this action on October 21, 2010. (Doc. 1.) On November 15, 2010, Plaintiff filed
18 the First Amended Complaint. (Doc. 9.) On June 17, 2011, with leave of court, Plaintiff filed
19 the Second Amended Complaint. (Doc. 18.) The Second Amended Complaint names
20 defendants N. Grannis (Head of Corrections), James A. Yates (Warden), Sergeant D. Revees,
21 Correctional Officer (C/O) R. Valencia, C/O L. Diez, C/O S. Espino, C. King (Fire Captain),
22 MTA H. Howard, MTA V. Obrien, K. Solo (RN), Dr. R. Das, and Dr. E. Brown.

23 The court screened Plaintiff's Second Amended Complaint pursuant to 28 U.S.C.
24 § 1915A and found that it states cognizable claims under § 1983 against defendants Valencia
25 and Diez for use of excessive force and against defendant Valencia for retaliation against
26 Plaintiff. (Doc. 19.) On May 14, 2014, Plaintiff was granted leave to either file an amended
27 complaint or notify the court that he is willing to proceed only on the claims found cognizable
28 by the court. (Id.) On August 1, 2014, Plaintiff filed a notice informing the court that he is

1 willing to proceed only on the cognizable claims against defendants Valencia and Diez. (Doc.
2 21.)

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

- 4 1. This action proceed only against defendants Valencia and Diez for use of
5 excessive force in violation of the Eighth Amendment, and against defendant
6 Valencia for retaliation against Plaintiff in violation of the First Amendment;
- 7 2. All remaining claims and defendants be dismissed from this action;
- 8 3. Plaintiff's claims for supervisory liability, for inadequate medical care, for
9 spreading false allegations, and for failure to supervise be dismissed from this
10 action based on Plaintiff's failure to state a claim upon which relief may be
11 granted under § 1983;
- 12 4. Defendants N. Grannis, James A. Yates, Sergeant D. Revees, C/O S. Espino, C.
13 King, MTA H. Howard, MTA V. Obrien, K. Solo (RN), Dr. R. Das, and Dr. E.
14 Brown be dismissed from this action based on Plaintiff's failure to state any
15 claims upon which relief may be granted against them.

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

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24 IT IS SO ORDERED.

25 Dated: August 4, 2014

26 /s/ Gary S. Austin
27 UNITED STATES MAGISTRATE JUDGE
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