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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BRIAN ESPRITT,

Plaintiff,

vs.

A. SAESEE, et al.,

Defendants.

1:11-cv-00519-AWI-GSA-PC

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS ACTION  
PROCEED ONLY AGAINST  
DEFENDANTS SAESEE, HILL, TORRES,  
DAVIS, LOPEZ, BALLESTEROS, AND  
MAGALLON ON PLAINTIFF'S CLAIMS  
FOR EXCESSIVE FORCE, AND THAT  
ALL OTHER CLAIMS AND  
DEFENDANTS BE DISMISSED FROM  
THIS ACTION

OBJECTIONS, IF ANY, DUE IN THIRTY  
DAYS

Brian Espritt ("Plaintiff"), a civil detainee at Atascadero State Hospital in Atascadero, California, is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's Second Amended Complaint, filed on July 20, 2012. (Doc. 17.) The Second Amended Complaint names defendants A. Saese (Correctional Counselor I), Velazquez (IGI Officer), Furlong (IGI Officer), Lieutenant Goss, and Correctional Officers (C/Os) S. Hill, S. Torres, J. Davis, M. Lopez, A. Ballesteros, and Y. Magallon.

The court screened Plaintiff's Second Amended Complaint pursuant to 28 U.S.C. § 1915A and found that it states cognizable claims for relief under § 1983 against only

1 defendants Saesee, Hill, Torres, Davis, Lopez, Ballesteros, and Magallon for use of excessive  
2 force in violation of the Eighth Amendment. (Doc. 26.) On April 15, 2013, Plaintiff was given  
3 leave to either file a Third Amended Complaint or notify the court that he is agreeable to  
4 proceeding only with the claims found cognizable by the Court. Id. On April 25, 2013,  
5 Plaintiff filed written notice to the court that he does not wish to file a Third Amended  
6 Complaint and wishes to proceed only on the claims found cognizable by the Court. (Doc. 27.)

7 Based on the foregoing, **IT IS HEREBY RECOMMENDED** that:

- 8 1. This action proceed only against defendants Saesee, Hill, Torres, Davis, Lopez,  
9 Ballesteros, and Magallon for use of excessive force in violation of the Eighth  
10 Amendment;
- 11 2. All remaining claims and defendants be dismissed from this action;
- 12 3. Plaintiff's claim for loss of property, ADA claim, medical claim, claim for  
13 denial of access to courts, and claims for declaratory relief and attorney's fees be  
14 dismissed from this action based on Plaintiff's failure to state a claim; and
- 15 4. Defendants Velazquez, Furlong, and Goss be dismissed from this action based  
16 on Plaintiff's failure to state any claims upon which relief may be granted  
17 against them.

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

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28 **IT IS SO ORDERED.**

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Dated: April 29, 2013

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE