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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES EDWARD BOWELL,

Plaintiff,

v.

A. DIAZ, et al.,

Defendants.

CASE No. 1:11-cv-01350-AWI-MJS (PC)

FINDINGS AND RECOMMENDATIONS
FOR DISMISSAL OF CERTAIN CLAIMS
AND DEFENDANTS

(ECF Nos. 10, 14)

OBJECTIONS DUE WITHIN FOURTEEN
(14) DAYS

_____ /

Plaintiff James Edward Bowell is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed August 15, 2011 pursuant to 42 U.S.C. § 1983. (Compl., ECF No. 1.) Plaintiff declined Magistrate Judge jurisdiction. (Decline Magistrate, ECF No. 5.)

The Court screened Plaintiff's Complaint and on September 28, 2012 issued its order requiring that, by not later than November 1, 2012, Plaintiff either file an amended pleading or notify the Court of his desire to proceed only on the cognizable Eighth Amendment failure to protect claim against Defendants Diaz and Rodriguez. (Order Directing Plaintiff to Amend or Notify, ECF No. 10.)

On November 20, 2012, the Court issued an order to show cause why this case should not be dismissed for Plaintiff's failure to comply with the Court's September 28th order to amend or notify. (OSC re Dismiss., ECF No. 13.) Plaintiff filed a response to the

1 order to show cause on November 30, 2012, notifying of his desire to proceed only on
2 the cognizable Eighth Amendment failure to protect claim against Defendants Diaz and
3 Rodriguez. (Opp'n to Order, ECF No. 14.)

4 Accordingly, it is RECOMMENDED that Plaintiff's Complaint, except for his Eighth
5 Amendment failure to protect claim against Defendants Diaz and Rodriguez should now
6 be dismissed and that all Defendants named in this action except for Defendants Diaz
7 and Rodriguez should also now be dismissed without prejudice by the District Judge.

8 These Findings and Recommendations are submitted to the United States District
9 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
10 Within fourteen (14) days after being served with these Findings and Recommendations,
11 any party may file written objections with the Court and serve a copy on all parties. Such
12 a document should be captioned "Objections to Magistrate Judge's Findings and
13 Recommendations." Any reply to the objections shall be served and filed within ten (10)
14 days after service of the objections. The parties are advised that failure to file objections
15 within the specified time may waive the right to appeal the District Court's order.
16 *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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19 IT IS SO ORDERED.

20 Dated: December 3, 2012

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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