

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HUSSEIN ALI KIETTY,) Case No.: 1:13-cv-00312-SAB (PC)
Plaintiff,)
v.)
A. WALKER, et al.,) ORDER DIRECTING DEFENDANTS TO FILE A
Defendants.) RESPONSE TO PLAINTIFF' S AMENDED
) COMPLAINT
) [ECF No. 25]
)
)

Plaintiff Hussein Ali Kietty is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Pursuant to permission by the Court, Plaintiff filed a first amended complaint on September 22, 2014.

Defendants Deathridge, Duty, Walker, Brumbaugh, Silva, and Astorga, filed an answer to Plaintiff's original complaint on May 30, 2014.

The Court has screened Plaintiff's first amended complaint pursuant to 28 U.S.C. § 1915A(a), and finds that Plaintiff's allegations state a cognizable claim for failure to protect against Defendants Walker, Deathriage, Rumbles, and Silva, a cognizable claim for excessive force against Defendants Walker, Asotrga, Deathriage, Brumbaugh, Silva, and Astorga, and a cognizable retaliation claim against Defendants Deathriage and Silva. Although Plaintiff names Officer Rodriguez as a Defendant in the amended complaint, Plaintiff fails to set forth sufficient factual allegations to state a cognizable

1 constitutional violation against him. The only allegation in the amended complaint references a verbal
2 threat by Rodriguez that he was going to "beat up" Plaintiff. Verbal harassment or abuse alone is not
3 sufficient to state a claim under section 1983, Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir.
4 1987), and threats do not rise to the level of a constitutional violation, Gaut v. Sunn, 810 F.2d 923, 925
5 (9th Cir. 1987). Accordingly, Plaintiff fails to state a cognizable claim against Defendant Rodriguez,
6 and this Defendant will not be ordered served in this action.

7 Based on the foregoing,

8 IT IS HEREBY ORDERED that within **thirty (30)** days from the date of service of this order,
9 Defendants shall file a response to Plaintiff's amended complaint.

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11 IT IS SO ORDERED.

12 Dated: October 6, 2014

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UNITED STATES MAGISTRATE JUDGE

