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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 JOHNATHAN HILL,

12 Plaintiff,

13 vs.

14 J. CLARK, et al.,

15 Defendants.  
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1:13-cv-00386-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS ACTION  
PROCEED ONLY AGAINST DEFENDANTS  
CLARK AND RIVAS ON PLAINTIFF'S  
EIGHTH AMENDMENT CLAIMS, AND ALL  
REMAINING CLAIMS AND DEFENDANTS  
BE DISMISSED  
(Doc. 1.)

OBJECTIONS, IF ANY, DUE WITHIN  
THIRTY (30) DAYS

19 Johnathan Hill ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in  
20 this civil rights action pursuant to 42 U.S.C. § 1983. The case now proceeds on the original  
21 Complaint filed by Plaintiff on March 18, 2013. (Doc. 1.) The Complaint names Correctional  
22 Officer (C/O) J. Clark, C/O A. Rivas, C/O L. Aragon; C/O A. Tirado; C/O J. Magana, and  
23 Sergeant W. Rasley as defendants, and alleges claims for excessive force and failure to protect  
24 under the Eighth Amendment.

25 The court screened Plaintiff's Complaint pursuant to 28 U.S.C. § 1915A and found that  
26 it states cognizable claims for relief under § 1983 against defendant C/O J. Clark for use of  
27 excessive force in violation of the Eighth Amendment, and against defendant C/O A. Rivas for  
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1 failure to protect Plaintiff in violation of the Eighth Amendment. Hudson v. McMillian, 503  
2 U.S. 1, 5 (1992); Oliver v. Keller, 289 F.3d 623, 628 (9th Cir. 2002); Farmer v. Brennan, 511  
3 U.S. 825, 832-33 (1994); Hearns v. Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005). On  
4 September 16, 2013, Plaintiff was given leave to either file an amended complaint, or in the  
5 alternative, to notify the court that he does not wish to file an amended complaint and instead  
6 wishes to proceed only on the claims identified by the court as viable/cognizable in the court's  
7 order. (Doc. 7.) On September 27, 2013, Plaintiff filed written notice to the court that he  
8 wished to proceed only on the claims found cognizable by the court. (Doc. 8.)

9 Based on Plaintiff's September 27, 2013 notice, the court entered findings and  
10 recommendations, recommending that this case proceed on the original Complaint against  
11 defendants Rivas and Clark, and that all other defendants be dismissed. (Doc. 10.) On  
12 November 12, 2013, Plaintiff filed objections to the findings and recommendations, objecting  
13 to the recommendation to dismiss all defendants except defendants Rivas and Clark. (Doc. 12.)  
14 Based on Plaintiff's objections, the court vacated the findings and recommendations and  
15 Plaintiff was again given leave to either file an amended complaint, or in the alternative, to  
16 notify the court that he does not wish to file an amended complaint and instead wishes to  
17 proceed only on the claims identified by the court as viable/cognizable in the court's order.  
18 (Doc. 13.) On November 25, 2013, Plaintiff filed written notice to the court that he wishes to  
19 proceed only against defendants Rivas and Clark.

20 Accordingly, based on Plaintiff's November 25, 2013 notice, the court **HEREBY**  
21 **RECOMMENDS** that:

- 22 1. This action proceed only against defendants C/O J. Clark for use of excessive  
23 force in violation of the Eighth Amendment, and C/O A. Rivas for failure to  
24 protect Plaintiff in violation of the Eighth Amendment;
- 25 2. All remaining claims and defendants be dismissed from this action;
- 26 3. Defendants C/O L. Aragon; C/O A. Tirado; C/O J. Magana, Sergeant W. Rasley,  
27 and the Doe Defendants be dismissed from this action based on Plaintiff's failure  
28 to state any claims upon which relief may be granted against them under § 1983.

