

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DAVID ESTRADA,)	1:13cv00919 LJO DLB PC
)	
Plaintiff,)	ORDER DIRECTING PLAINTIFF TO
)	CLARIFY WILLINGNESS TO PROCEED
vs.)	ON COGNIZABLE CLAIMS
)	
TASSEY, et al.,)	TWENTY-ONE DAY DEADLINE
)	
Defendants.)	

Plaintiff David Estrada (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this this civil action. Plaintiff filed this action on June 17, 2013. On August 8, 2013, Plaintiff filed a First Amended Complaint. The Court issued a screening order on September 3, 2013, and on September 11, 2013, Plaintiff notified the Court of his willingness to proceed on the cognizable claims.

Pursuant to Plaintiff’s notification, the Magistrate Judge issued Findings and Recommendations on September 20, 2013, that this action proceed on the following claims: (1) retaliation in violation of the First Amendment against Defendants Gipson and Espinosa; and (2) violation of the Eighth Amendment against Defendants Gipson, Espinosa, Lambert and Cavazos. The Court further recommended that the remaining claims, as well as Defendants

1 Savermilch, Musselman, Garcia, Rodriguez, Vogel, Gonzalez, Beard, Cate and Castro, be
2 dismissed.

3 Plaintiff returned service documents and the United States Marshall was directed to serve
4 Defendants Gipson, Espinosa, Lambert and Cavazos on October 11, 2013.

5 On October 15, 2013, despite his prior notification to proceed only on the cognizable
6 claims, Plaintiff submitted objections to the Findings and Recommendations. Plaintiff's
7 objections are inconsistent to his willingness to proceed only on the cognizable claims.
8

9 Accordingly, within twenty-one days, Plaintiff shall CLARIFY his intent. If Plaintiff is
10 willing to proceed on the cognizable claims, he shall notify the Court and the Findings and
11 Recommendations will be adopted and this action will move forward accordingly. If Plaintiff
12 intends to file an amended complaint, he shall notify the Court and the Findings and
13 Recommendations will be vacated. **If Plaintiff elects to amend, his amended complaint will**
14 **be screened in due course and the October 11, 2013, order directing service will be vacated.**

15
16 IT IS SO ORDERED.

17 Dated: October 17, 2013

18 /s/ Dennis L. Beck
19 UNITED STATES MAGISTRATE JUDGE
20
21
22
23
24
25
26
27
28