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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

DAVID ESTRADA, ) 1:13cv00919 LJO DLB PC  
 )  
 ) Plaintiff, ) ORDER ADOPTING FINDINGS  
 ) AND RECOMMENDATIONS AND  
 ) vs. ) DISMISSING CERTAIN CLAIMS AND  
 ) DEFENDANTS  
 )  
 ) TASSEY, et al., ) (Document 27)  
 )  
 ) Defendants. )

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Plaintiff David Estrada (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this this civil action. Plaintiff filed his First Amended Complaint on August 8, 2013. On September 3, 2013, the Court issued a second screening order requiring Plaintiff to either file an amended complaint or notify the Court of his willingness to proceed on the cognizable claims. On September 11, 2013, Plaintiff notified the Court that he would proceed on the cognizable claims. The matters were referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 20, 2013, pursuant to Plaintiff’s notification, the Magistrate Judge issued [Findings and Recommendations](#) that the action proceed on (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

1 recommended that the remaining claims, as well as Defendants Savermilch, Musselman, Garcia,  
2 Rodriguez, Vogel, Gonzalez, Beard, Cate and Castro, be dismissed. The Findings and  
3 Recommendations were served on Plaintiff and contained notice that any objections were to be  
4 filed within thirty days.

5 On Plaintiff filed [objections](#) on October 15, 2013. As objections were inconsistent with  
6 Plaintiff's prior notification to move forward with the cognizable claims, the Court ordered  
7 Plaintiff to clarify his intent on October 18, 2013.

8 On November 18, 2013, Plaintiff informed the Court that he did not wish to amend his  
9 complaint and wanted to move forward with this action.

10 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted  
11 a de novo review of this case. Having carefully reviewed the entire file, the Court finds that the  
12 Findings and Recommendations are supported by the record and by proper analysis.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14
- 15 1. The Findings and Recommendations, filed September 20, 2013, are ADOPTED in  
16 full;
  - 17 2. This actions SHALL PROCEED on the following cognizable claims: (1)  
18 retaliation in violation of the First Amendment against Defendants Gipson and  
19 Espinosa; and (2) violation of the Eighth Amendment against Defendants Gipson,  
20 Espinosa, Lambert and Cavazos; and<sup>1</sup>
  - 21 3. All other claims, as well as Defendants Savermilch, Musselman, Garcia,  
22 Rodriguez, Vogel, Gonzalez, Beard, Cate and Castro, are DISMISSED.

23 IT IS SO ORDERED.

24 Dated: November 19, 2013

25 /s/ Lawrence J. O'Neill  
26 UNITED STATES DISTRICT JUDGE

27 \_\_\_\_\_  
28 <sup>1</sup> Plaintiff returned service documents and on October 11, 2013, the United States Marshal was ordered to serve these Defendants.

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