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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHNNY BRIONES,
Plaintiff,
vs.
PLEASANT VALLEY STATE PRISON,
et al.,
Defendants.

1:14-cv-00750-LJO-EPG-PC
FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION
PROCEED ONLY AGAINST DEFENDANTS
MOORE, HENDRICKS, HAND, AND COLE
ON PLAINTIFF'S EXCESSIVE FORCE
CLAIMS, AND THAT ALL OTHER CLAIMS
AND DEFENDANTS BE DISMISSED
OBJECTIONS, IF ANY, DUE IN 20 DAYS

Johnny Briones (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. The case now proceeds on the Second Amended Complaint filed by Plaintiff on February 13, 2015. (ECF No. 31.) The Second Amended Complaint names defendants Warden Scott Frauenheim, Correctional Officer (C/O) R. Moore, C/O C. Hendricks, C/O R. Hand, C/O C. Cole, and multiple Doe Defendants, and alleges Eighth Amendment claims for excessive force, supervisory liability, inadequate medical care, and failure to protect, Fourteenth Amendment liberty interests, and conspiracy.

The Court screened Plaintiff’s Second Amended Complaint pursuant to 28 U.S.C. § 1915A and found that it states cognizable excessive force claims under § 1983 against C/O R. Moore, C/O C. Hendricks, C/O R. Hand, and C/O C. Cole. (ECF No. 35.) On April 6, 2016, Plaintiff was granted leave to either file a Third Amended Complaint or notify the Court that he

1 is willing to proceed only on the claims found cognizable by the Court. (Id.) On May 5, 2016,
2 Plaintiff filed a notice informing the Court that he is willing to proceed only on the cognizable
3 Eighth Amendment excessive force claims against defendants Moore, Hendricks, Hand, and
4 Cole. (ECF No. 38.)

5 Based on the foregoing, it is **HEREBY RECOMMENDED** that:

- 6 1. This action proceed only against defendants C/O R. Moore, C/O C. Hendricks,
7 C/O R. Hand, and C/O C. Cole, on Plaintiff's Eighth Amendment excessive
8 force claims;
- 9 2. All remaining claims and defendants be dismissed from this action;
- 10 3. Plaintiff's claims for supervisory liability, inadequate medical care, failure to
11 protect, Fourteenth Amendment liberty interests, and conspiracy be dismissed
12 from this action based on Plaintiff's failure to state a claim; and
- 13 4. Defendants Warden Scott Frauenheim and the Doe Defendants be dismissed
14 from this action based on Plaintiff's failure to state any claims against them.

15 These Findings and Recommendations will be submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
17 **twenty (20) days** after being served with these Findings and Recommendations, Plaintiff may
18 file written objections with the Court. The document should be captioned "Objections to
19 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
20 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
21 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
22 (9th Cir. 1991)).

23
24 **IT IS SO ORDERED.**

25 Dated: May 6, 2016

26 /s/ Eric P. Grogan
27 UNITED STATES MAGISTRATE JUDGE
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