## 1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 JOSEPH PEREZ, No. 1:14-cv-01730-DAD-EPG 12 Plaintiff. 13 ORDER ADOPTING FINDINGS AND RECOMMENDATIONS v. 14 R. PADILLA, (Doc. No. 71) 15 Defendants. 16 17 Joseph Perez ("plaintiff") is a former state prisoner proceeding pro se and in forma 18 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a 19 United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 20 On June 24, 2016, the assigned magistrate judge screened plaintiff's complaint and found 21 that it stated only a cognizable claim against defendant Padilla and that none of the other claims 22 were cognizable. (Doc. No. 25.) 23 On December 6, 2017, the assigned magistrate judge re-screened plaintiff's complaint, 24 recognizing that a recent Ninth Circuit opinion, Williams v. King, 875 F.3d 500 (9th Cir. 2017), 25 had held that a magistrate judge does not have jurisdiction to dismiss claims with prejudice absent 26 the consent of all parties, even if the plaintiff has consented to magistrate judge jurisdiction, as 27 plaintiff had here, and the defendants had not yet appeared. (Doc. No. 3.) Concurrently, the 28 magistrate judge entered findings and recommendations, recommending that all claims and

defendants, except for plaintiff's claim for excessive use of force in violation of the Eighth Amendment against defendant R. Padilla, be dismissed. (Doc. No. 71.)

The parties were provided an opportunity to file objections to the findings and recommendations within fourteen days. Neither party filed objections, however, plaintiff sought to appeal the findings and recommendations to the Ninth Circuit. (Doc. No. 72.) On January 23, 2018, the Ninth Circuit Court of Appeals dismissed that appeal for lack of jurisdiction. (Doc. No. 77.)

The court will, out of an abundance of caution, consider the points raised by plaintiff in his dismissed appeal as objections to the findings and recommendations. Construed as such, plaintiff's objections lack merit. In short, it appears plaintiff mistakenly believes that the magistrate judge recommended that this action be dismissed in its entirety, but that is not the case. (Doc. No. 72 at 2.) The action will proceed on the same excessive use of force claim against defendant R. Padilla that was found by the magistrate judge to be cognizable.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Rule 304, this court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and proper analysis.

## Accordingly:

- 1. The findings and recommendations issued by the magistrate judge on December 6, 2017, are adopted in full;
- 2. All claims and defendants, except for plaintiff's claim against defendant R. Padilla for excessive use of force in violation of the Eighth Amendment are dismissed; and
- 3. This case is referred back to the magistrate judge for further proceedings.

IT IS SO ORDERED.

Dated: **January 25, 2018** 

UNITED STATES DISTRICT JUDGE