

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

3 The parties were provided an opportunity to file objections to the findings and
4 recommendations within fourteen days. Neither party filed objections, however, plaintiff sought
5 to appeal the findings and recommendations to the Ninth Circuit. (Doc. No. 72.) On January 23,
6 2018, the Ninth Circuit Court of Appeals dismissed that appeal for lack of jurisdiction. (Doc. No.
7 77.)

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

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

17 Accordingly:

- 18 1. The findings and recommendations issued by the magistrate judge on December 6,
19 2017, are adopted in full;
- 20 2. All claims and defendants, except for plaintiff's claim against defendant R. Padilla for
21 excessive use of force in violation of the Eighth Amendment are dismissed; and
- 22 3. This case is referred back to the magistrate judge for further proceedings.

23 IT IS SO ORDERED.

24 Dated: January 25, 2018

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27 UNITED STATES DISTRICT JUDGE
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