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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

JOSHUA A. WILLARD,

Plaintiff,

v.

J. NEIBERT, et al.,

Defendants.

Defendants.

Description:

| Case No.: 1:14-cv-01951-AWI-SAB (PC)
| ORDER DISMISSING PLAINTIFF'S EIGHTH AMENDMENT MEDICAL CLAIM FOR FAILURE TO STATE A COGNIZABLE CLAIM, AND REFERRING MATTER BACK TO MAGISTRATE JUDGE FOR INITIATION OF SERVICE OF PROCESS ON PLAINTIFF'S EIGHTH AMENDMENT CLAIM OF EXCESSIVE FORCE

| ECF Nos. 1, 9, 12]

Plaintiff Joshua A. Willard is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

On February 20, 2015, the Court screened Plaintiff's complaint pursuant to 28 U.S.C. § 1915A and found that it stated a claim for against Defendants L. Lara. J. Loveall, and J. Westphal for excessive force, and a correlating claim for failure to intervene against Defendant J. Neibert in violation of the Eighth Amendment of the United States Constitution. Fed. R. Civ. P. 8(a); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007); Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010). However, the Court found that the complaint did not state a claim arising out of failure to provide medical care. The Court ordered Plaintiff to either file an amended complaint curing the deficiencies identified or notify the Court he is willing to proceed only on his cognizable claim. On March 4, 2015, Plaintiff filed a notice stating he does not intend to amend

1	and he is willing to proceed only on his cognizable Eighth Amendment claim against Defendants L.	
2	Lara, J. Loveall, J. Westphal, and J. Neibert.	
3	Accordingly, IT IS HEREBY ORDERED that:	
4	1.	Plaintiff's claim for deliberate indifference to a serious medical need in violation of the
5		Eighth Amendment is dismissed for failure to state a cognizable claim for relief;
6	2.	This action shall proceed on Plaintiff's claim of excessive force against Defendants L.
7		Lara, J. Loveall, J. Westphal, and against Defendant J. Neibert for failure to intervene
8		in violation of the Eighth Amendment; and
9	3.	The matter is referred back to the Magistrate Judge for initiation of service of process
10		by the United States marshal.
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12	IT IS SO ORDERED.	
13	Dated: March 11, 2015	
14		SENIOR DISTRICT JUDGE
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