## 1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 JONATHAN KIRKELIE, No. 1:15-cv-00735-DAD-SAB (PC) 12 Plaintiff. 13 v. RECOMMENDATIONS, AND DISMISSING 14 C.O. THISSELL, et al., **CERTAIN CLAIMS AND DEFENDANTS** 15 Defendants. (Doc. Nos. 20, 60) 16 17 18 Plaintiff Jonathan Kirkelie is a prisoner in the custody of the Federal Bureau of Prisons 19 ("BOP"). Plaintiff consented to United States Magistrate Judge jurisdiction under 28 U.S.C. § 20 636(c) on May 28, 2015. To date, defendants have not consented or declined United States 21 magistrate judge jurisdiction. 22 On January 25, 2016, the assigned magistrate judge screened plaintiff's second amended 23 complaint and found that plaintiff stated cognizable Fourth and Eighth Amendment claims 24 against defendant Thissell, and a cognizable Eighth Amendment claim for failure to protect against defendants Smith, Madttavi, Masterson, Knoll, and Does 1 and 2. (Doc. No. 20.) The 25 26 magistrate judge dismissed all other claims and defendants from the action for failure to state a 27 cognizable claim for relief. (Id.) In issuing that order, the magistrate judge indicated that

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other parties had yet appeared in the action. (*Id.*)

On August 5, 2016, defendants filed a motion to dismiss or, in the alternative, motion for summary judgment. (Doc. No. 29.) On March 29, 2017, the undersigned adopted the assigned magistrate judge's findings and recommendations and defendants' motion was granted as to defendant Masterson only and denied in all other respects. (Doc. No. 45.) On September 8, 2017, defendants Knoll, Madttavi, Smith and Thissell filed an answer to the complaint. (Doc. No. 57.) On September 13, 2017, the court issued the discovery and scheduling order. (Doc. No. 59.)

On November 9, 2017, the Ninth Circuit Court of Appeals ruled that 28 U.S.C. § 636(c)(1) requires the consent of all named plaintiffs and defendants, even those not served with process, before jurisdiction may vest in a magistrate judge to dispose of a civil case. *Williams v. King*, \_\_ F.3d \_\_, Case No. 15-15259, 2017 WL 5180205, at \*3 (9th Cir. Nov. 9, 2017). Accordingly, the magistrate judge did not have jurisdiction to dismiss the above-described claims in its January 25, 2016 order. Therefore, on November 30, 2017, the magistrate judge issued findings and recommendations recommending that this action proceed against defendant Thissell for violations under the Fourth and Eighth Amendments, and against defendants Smith, Madttavi, Masterson, Knoll, and Does 1 and 2 for failure to protect in violation of the Eighth Amendment, and that all other claims and defendants be dismissed from the action for failure to state a cognizable claim for relief. (Doc. No. 60.) The findings and recommendations were served on the parties and contained notice that objections were to be filed within fourteen days. No objections were filed and the time period to do has expired.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, the undersigned has conducted a de novo review of plaintiff's case. The undersigned concludes the findings and recommendations are supported by the record and by proper analysis.

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1	Acco	rdingly, it is hereby ordered that:
2	1.	The November 30, 2017 findings and recommendations (Doc. No. 60) are adopted
3		in full;
4	2.	At the screening stage only, plaintiff has stated a cognizable claim against
5		defendant Thissel for violations under the Fourth and Eighth Amendments, and
6		against defendants Smith, Madttavi, Masterson, Knoll, and Does 1 and 2 for
7		failure to protect in violation of the Eighth Amendment; <sup>1</sup> and
8	3.	All other claims and defendants are dismissed from the action for failure to state a
9		cognizable claim for relief.
10	IT IS SO OR	RDERED.
11	Dated:	January 5, 2018 Dale A. Dryd
12		UNITED STATES DISTRICT JUDGE
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26	1 The Morel	n 29, 2017 ruling on defendants' motion to dismiss, or in the alternative motion for
27	summary jud	Igment, still stands and defendant Masterson has been properly dismissed from the
28	action. (Doc	c. No. 45.)