1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 EASTERN DISTRICT OF CALIFORNIA 10 11 EDWARD FURNACE, Case No. 1:16-cv-00420-LJO-BAM (PC) 12 Plaintiff. ORDER ADOPTING FINDINGS AND RECOMMENDATIONS REGARDING 13 DISMISSAL OF CERTAIN CLAIMS AND v. **DEFENDANTS** 14 B. COPE, et al., (ECF No. 30) 15 Defendants. 16 17 Plaintiff Edward Furnace ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This matter was referred to a 18 19 United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 20 On May 14, 2018, the Magistrate Judge issued findings and recommendations finding that 21 Plaintiff's second amended complaint stated a cognizable claim against Defendant Villa for 22 excessive force in violation of the Eighth Amendment. (ECF No. 30.) The Magistrate Judge recommended that all other claims, including Plaintiff's claim for declaratory relief, and all other 23 defendants, be dismissed from this action based on Plaintiff's failure to state claims upon which 24 relief may be granted. Those findings and recommendations were served on Plaintiff and 25 26 contained notice that any objections thereto were to be filed within fourteen (14) days after service. (Id.) Following an extension of time, Plaintiff's objections were filed on June 20, 2018. 27

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(ECF No. 33.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), 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 by proper analysis.

As indicated, the Court has reviewed Plaintiff's objections, which are extensive.

Generally, Plaintiff argues that the Magistrate Judge erred by not finding that Defendants engaged in a conspiracy to retaliate against Plaintiff, and that there were no legitimate penological purposes behind their actions. As discussed throughout the findings and recommendations, Plaintiff's conclusory allegations regarding Defendants' motivations, knowledge of Plaintiff's prior or ongoing litigation, or meeting of the minds to violate Plaintiff's rights are insufficient to state a cognizable claim. In addition, Plaintiff has provided no argument justifying joinder of the cognizable excessive force claim with the other unrelated allegations in this action, aside the bare assertion that it was part of a series of acts committed against him in retaliation for his First Amendment conduct.

Accordingly, IT IS HEREBY ORDERED as follows:

- 1. The findings and recommendations issued on May 14, 2018, (ECF. No. 30), are adopted in full;
- 2. This action shall proceed on Plaintiff's second amended complaint against Defendant Villa for excessive force in violation of the Eighth Amendment;
- 3. Plaintiff's remaining claims, including Plaintiff's claim for declaratory relief, and all other defendants are dismissed from this action, with prejudice, based on Plaintiff's failure to state claims upon which relief may be granted; and
- 4. This action is referred back to the Magistrate Judge for proceedings consistent with this order.

IT IS SO ORDERED.

Dated: October 1, 2018 /s/ Lawrence J. O'Neill UNITED STATES CHIEF DISTRICT JUDGE