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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
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8 ERNESTO PASILLAS,
9 Plaintiff,

10 v.

11 C/O SOTO, et al.,
12 Defendants.
13

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND
DISMISSING CERTAIN DEFENDANTS
(Doc. No. 18)

ORDER REASSIGNING ACTION

Former Case No.: 1:16-cv-00487-AWI-SAB

New Case No.: 1:16-cv-00487-SAB

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16 Plaintiff Ernesto Pasillas is a state prisoner proceeding *pro se* and *in forma pauperis* in
17 this civil rights action pursuant to 42 U.S.C. § 1983.

18 On April 14, 2016, Plaintiff consented to the jurisdiction of a United States Magistrate
19 Judge pursuant to 28 U.S.C. § 636(c) and Local Rule 302. (Doc. No. 5.) Shortly thereafter, on
20 June 16, 2016, the then-assigned magistrate judge screened Plaintiff's complaint and found that
21 it stated a cognizable claim against Defendant Soto for the failure to intervene while Plaintiff
22 was assaulted by another inmate, in violation of the Eighth Amendment. (Doc. No. 6.) The
23 magistrate judge further found that Plaintiff failed to state a cognizable claim against Defendants
24 Wilson and Moss. (*Id.*) Plaintiff was directed to notify the Court in writing that he was willing
25 to proceed only against Defendant Soto, or to amend his complaint to attempt to cure the
26 deficiencies identified in the Court's order. (*Id.*)

27 On June 29, 2016, Plaintiff filed a document stating that he did not wish to amend his
28 complaint, but asserting that he had pleaded sufficient allegations against Defendant Soto and

1 Defendant Wilson. (Doc. No. 7.) The case was then re-assigned to the currently-assigned
2 magistrate judge. (Doc. No. 8.)

3 On September 19, 2016, the magistrate judge dismissed Defendants Wilson and Moss for
4 the failure to state a cognizable claim against them based on the reasoning of the prior screening
5 order, and ordered that the action would proceed only against Defendant Soto on Plaintiff's
6 failure to protect claim. (Doc. No. 9.) The case then proceeded on Plaintiff's claim against
7 Defendant Soto.

8 On April 13, 2017, Defendant Soto appeared and consented to the jurisdiction of a United
9 States Magistrate Judge pursuant to 28 U.S.C. § 636(c) and Local Rule 302. (Doc. No. 15.) On
10 May 8, 2017, Defendant Soto answered the complaint. (Doc. No. 16.) On May 9, 2017, the
11 Court issued a discovery and scheduling order. (Doc. No. 17.)

12 On November 30, 2017, the magistrate judge reinstated Plaintiff's previously dismissed
13 claims, recognizing that a recent Ninth Circuit opinion, *Williams v. King*, 875 F.3d 500 (9th Cir.
14 2017), had held that a magistrate judge does not have jurisdiction to dismiss claims with
15 prejudice in screening prisoner complaints even if a plaintiff has consented to magistrate judge
16 jurisdiction, as Plaintiff had done here. (Doc. No. 18.) Concurrently, the magistrate judge issued
17 findings and recommendations recommending that the undersigned dismiss those reinstated
18 claims. (*Id.*) The parties were given fourteen days to file his objections to those findings and
19 recommendations. No objections were filed, and the time in which to do so has now passed.

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

23 Accordingly, it is HEREBY ORDERED that:

- 24 1. The findings and recommendations issued on November 30, 2017 and filed on
25 December 1, 2017 (Doc. No. 18) are adopted in full;
- 26 2. Plaintiff's claims against Defendants Wilson and Moss are dismissed for the
27 failure to state a claim upon which relief may be granted;

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