

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SIMON THORNTON.

Plaintiff.

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DONALD L. GRISSOM, et al..

Defendants.

CASE NO. 1:16-cv-0498-AWI-MJS (PC)

ORDER

- (1) VACATING FINDINGS AND RECOMMENDATIONS;**
- (2) DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT; AND**
- (3) GRANTING REQUEST FOR EXTENSION OF TIME TO FILE MOTION FOR RECONSIDERATION**

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

On October 4, 2016, Plaintiff's First Amended Complaint (ECF No. 9) was screened and found to state a cognizable Eighth Amendment excessive force claim.

1 against Defendant Grissom and an Eighth Amendment failure to protect claim against
2 Defendant Cruz. (ECF No. 18.) The Court concluded that all other claims and
3 Defendants were subject to dismissal. Plaintiff was then directed to file a notice of his
4 willingness to proceed on the pleading as screened or to file a Second Amended
5 Complaint.

6 On October 21, 2016, Plaintiff filed a notice of his willingness to proceed on the
7 First Amended Complaint as screened. (ECF No. 20.) Accordingly, the undersigned
8 issued Findings and Recommendations to that effect on November 8, 2016,
9 recommending that Plaintiff be permitted to proceed on the cognizable claims asserted
10 in the First Amended Complaint and that all other claims and Defendants be dismissed
11 with prejudice. (ECF No. 22.) The following day, on November 9, 2016, the undersigned
12 denied three of Plaintiff's motions for appointment of counsel. (ECF No. 23.)

13 Plaintiff has now filed objections to the Findings and Recommendations. (ECF No.
14 24.) Therein, Plaintiff seeks leave to file an amended complaint and an extension of time
15 to file a motion for reconsideration of the November 9, 2016, order denying his requests
16 for appointment of counsel.

17 Based on the foregoing, IT IS HEREBY ORDERED that:

18 1. The November 8, 2016, Findings and Recommendations (ECF No. 22) are
19 VACATED;

20 2. Plaintiff shall file a Second Amended Complaint within **thirty days** from the
21 date of this Order. If Plaintiff fails to file an amended pleading, the Court will
22 presume that Plaintiff wishes to proceed on the First Amended Complaint as
23 screened and will therefore re-issue the November 8, 2016, Findings and
24 Recommendations; and

25 3. Plaintiff's request for an extension of time is GRANTED. Within **fourteen days**

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1 from the date of this Order, Plaintiff shall file a motion for reconsideration of
2 the November 9, 2016, Order Denying Plaintiff's Motions for Appointment of
3 Counsel.

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5 IT IS SO ORDERED.

6 Dated: December 23, 2016

7 /s/ *Michael J. Seng*
8 UNITED STATES MAGISTRATE JUDGE
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