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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SIMON THORNTON,
Plaintiff,
v.
D. GRISSOM, et al.,
Defendant.

1:16-cv-00498-AWI-MJS (PC)
**ORDER DENYING MOTION FOR JURY TRIAL; AND
FINDINGS AND RECOMMENDATION TO DENY PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
(ECF Nos. 34-35)**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action 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 against Defendant Grissom and an Eighth Amendment failure to protect claim against Defendant Cruz. (ECF No. 18.) However, the Court concluded that all other claims and Defendants were subject to dismissal. Plaintiff agreed to proceed on that pleading as screened, and Findings and Recommendations related to the screening order are now pending before the district judge. (ECF No. 31.)

Plaintiff has now filed a motion for summary judgment and a motion for jury trial. Since service has not yet been initiated on the Defendants and none have yet appeared

1 in this action, Plaintiff's motion for summary judgment is premature. The cursory
2 summary judgment motion also fails to comply with the procedural requirements of
3 Federal Rule of Civil Procedure 56 and Eastern District Local Rule 260(a). The
4 undersigned will therefore recommend that it be denied.

5 In addition, Plaintiff's motion for a jury trial is moot since he has already requested
6 a jury trial in the operative pleading. See Sec. Am. Compl. (ECF No. 19) at 9; Fed. R.
7 Civ. P. 38(b).

8 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for a jury trial (ECF
9 No. 35) is DENIED as moot; and

10 IT IS HEREBY RECOMMENDED that Plaintiff's motion for summary judgment
11 (ECF No. 34) be DENIED without prejudice.

12 The findings and recommendations will be submitted to the United States District
13 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
14 Within fourteen (14) days after being served with the findings and recommendations, the
15 parties may file written objections with the Court. The document should be captioned
16 "Objections to Magistrate Judge's Findings and Recommendations." A party may
17 respond to another party's objections by filing a response within fourteen (14) days after
18 being served with a copy of that party's objections. The parties are advised that failure to
19 file objections within the specified time may result in the waiver of rights on appeal.
20 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923
21 F.2d 1391, 1394 (9th Cir. 1991)).

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23 IT IS SO ORDERED.

24 Dated: May 5, 2017

/s/ Michael J. Seng
25 UNITED STATES MAGISTRATE JUDGE

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