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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)
**FINDINGS AND RECOMMENDATION TO
DENY PLAINTIFF'S SECOND MOTION
FOR SUMMARY JUDGMENT**
(ECF No. 44)
FOURTEEN-DAY DEADLINE

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 action proceeds on Plaintiff's First Amended Complaint on an Eighth Amendment excessive force claim against Defendant Grissom and an Eighth Amendment failure to protect claim against Defendant Cruz. The United States Marshal was directed to serve these Defendants on May 30, 2017. There have been no appearances to date by either Defendant.

Pending now is Plaintiff's second motion for summary judgment. (ECF No. 44.) Plaintiff's first motion for summary judgment was denied as premature on June 30, 2017. (See ECF Nos. 36, 46.) Plaintiff's renewed motion again seeks judgment on the claims asserted in this case. Since Defendants have yet to appear in this action, Plaintiff's motion for summary judgment is again premature. Additionally, the cursory summary judgment motion fails to comply with the procedural requirements of Federal Rule of Civil

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Procedure 56 and Eastern District Local Rule 260(a). The undersigned will therefore recommend that it be denied.

Accordingly, IT IS HEREBY RECOMMENDED that Plaintiff's June 26, 2017, motion for summary judgment (ECF No. 44) be DENIED without prejudice.

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

IT IS SO ORDERED.

Dated: July 20, 2017

Is! Michael J. Seng
UNITED STATES MAGISTRATE JUDGE