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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL JACQUES,

Plaintiff,

v.

J. LOPEZ, JR., et al.,

Defendants.

Case No. 1:16-cv-01289-DAD-SAB (PC)

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF
CERTAIN CLAIMS AND DEFENDANTS

ORDER FINDING SERVICE OF
COMPLAINT APPROPRIATE AS TO
CERTAIN DEFENDANTS, AND
FORWARDING PLAINTIFF THE
NECESSARY SERVICE OF PROCESS
FORMS FOR COMPLETION AND
RETURN **WITHIN THIRTY DAYS**

[ECF Nos. 1, 7, 8]

Plaintiff Michael Jacques is 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 United States Magistrate Judge pursuant to 28 U.S.C. § 636(1)(B) and Local Rule 302.

On April 18, 2017, the Court screened Plaintiff's August 31, 2016 complaint and issued findings and recommendations that this action proceed against Defendants Lopez, Razo, Athie, and Garza for excessive force, and against Defendant Vasquez for failing to intervene during the alleged use of excessive force, and that all other claims and defendants be dismissed. (ECF No. 7.) Plaintiff was ordered to amend his complaint to attempt to cure the deficiencies identified by the Court in that order, or notify the Court that he is agreeable to proceeding only on the claims identified as cognizable. (Id. at p. 11.)

1 On May 3, 2017, Plaintiff notified the Court that he will not amend his complaint, and
2 agrees to proceed only on the claims found to be cognizable in the Court's April 18, 2017
3 screening order. (ECF No. 8.) As a result, the Court will recommend that Defendants Joseph,
4 Monge, Gonzalez, Barrios and Aro be dismissed from this action, and that it only proceed on the
5 claims identified above for the reasons stated in the Court's April 18, 2017 screening order. Fed.
6 R. Civ. P. 8(a); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atlantic Corp. v. Twombly,
7 550 U.S. 544, 555 (2007); Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010). The Court will
8 also order that service of Plaintiff's complaint, filed August 31, 2016, be initiated.

9 Accordingly, it is HEREBY ORDERED that:

10 1. Service shall be initiated on the following defendants:

11 **J. Lopez, Jr., Correctional Officer at North Kern State Prison**

12 **R. Razo, Correctional Officer at North Kern State Prison**

13 **P. Athie, Correctional Officer at North Kern State Prison**

14 **J. Garza, Correctional Officer at North Kern State Prison**

15 **T. Vasquez, Correctional Officer at North Kern State Prison**

16 2. The Clerk of the Court shall send Plaintiff 5 (5) USM-285 forms, five (5)
17 summonses, a Notice of Submission of Documents form, an instruction sheet and
18 a copy of the complaint filed August 31, 2016 (ECF No. 1);

19 3. Within **thirty (30) days** from the date of this order, Plaintiff shall complete the
20 attached Notice of Submission of Documents and submit the completed Notice to
21 the Court with the following documents:

22 a. One completed summons for each Defendant listed above;

23 b. One completed USM-285 form for each Defendant listed above;

24 c. Six (6) copies of the endorsed complaint filed August 31, 2016; and

25 d. All CDCR Form 602 documentation submitted in relation to
26 this case;

27 4. Plaintiff need not attempt service on the defendants and need not request waiver
28 of service. Upon receipt of the above-described documents, the Court will direct

1 the United States Marshal to serve the above-named defendants pursuant to
2 Federal Rule of Civil Procedure 4 without payment of costs; and

3 5. Plaintiff is warned that the failure to comply with this order will result in a
4 recommendation to dismiss this action.

5 It is also HEREBY RECOMMENDED that:

6 1. This action only proceed on Plaintiff's claims against Defendants Lopez, Razo,
7 Athie, and Garza for excessive force, and a cognizable claim against Defendant
8 Vasquez for failing to intervene during the alleged use of excessive force; and

9 2. All other claims and defendants be dismissed for failure to state a claim upon
10 which relief could be granted.

11 These findings and recommendations will be submitted to the United States District
12 Judge assigned to the case, pursuant to the provision of 28 U.S.C. §636 (b)(1)(B). Within
13 **fourteen (14) days** after being served with these Finding and Recommendations, Plaintiff may
14 file written objections with the Court. The document should be captioned "Objections to
15 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
16 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.2d F.3d
17 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

18 IT IS SO ORDERED.

19 Dated: May 4, 2017

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22 UNITED STATES MAGISTRATE JUDGE
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