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7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA  
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10 CARLOS BURNETT,

11 Plaintiff,

12 vs.

13 K. SEDILLO, et al.,

14 Defendants.  
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1:16-cv-01672-LJO-GSA-PC

**FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS ACTION  
PROCEED ONLY AGAINST DEFENDANTS  
MEIER, REYNAGA, HUCKLEBERRY,  
GARCIA, AND DYER FOR USE OF  
EXCESSIVE FORCE, AND THAT ALL  
OTHER CLAIMS AND DEFENDANTS BE  
DISMISSED**

**OBJECTIONS, IF ANY, DUE IN FOURTEEN  
(14) DAYS**

18 Carlos Burnett (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis  
19 with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint  
20 commencing this action on November 3, 2016. (ECF No. 1.)

21 The court screened Plaintiff’s Complaint pursuant to 28 U.S.C. § 1915A and found that  
22 it states cognizable excessive force claims against defendants Correctional Officer (C/O) G.  
23 Meier, C/O R. Reynaga, Sergeant G. Garcia, C/O C. Huckleberry, and C/O Ryan Dyer, but no  
24 other claims. (ECF No. 12.) On August 28, 2017, Plaintiff was granted leave to either file an  
25 amended complaint or notify the court that he is willing to proceed only on the claims found  
26 cognizable by the court. (Id.) On September 21, 2017, Plaintiff filed a notice informing the  
27 court that he is willing to proceed only on the cognizable excessive force claims. (ECF No.  
28 13.)

1 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 2 1. This action proceed only against defendants Meier, Reynaga, Huckleberry,  
3 Garcia, and Dyer, for use of excessive force in violation of the Eighth  
4 Amendment;
- 5 2. All remaining claims and defendants be dismissed from this action;
- 6 3. Plaintiff's claims for violation of due process, failure to protect him, and  
7 retaliation be dismissed from this action based on Plaintiff's failure to state a  
8 claim; and
- 9 4. Defendants Sedillo, Davidson, and Nuckles be dismissed from this action for  
10 Plaintiff's failure to state any cognizable claims against them.

11 These Findings and Recommendations will be submitted to the United States District  
12 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
13 **fourteen (14) days** of the date of service of these Findings and Recommendations, Plaintiff  
14 may file written objections with the Court. The document should be captioned "Objections to  
15 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
16 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.  
17 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394  
18 (9th Cir. 1991)).

19  
20 IT IS SO ORDERED.

21 Dated: September 25, 2017

/s/ Gary S. Austin  
22 UNITED STATES MAGISTRATE JUDGE