UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

DERRYL TYRONE FOSTER,) Case No.: 1:16-cv-01839-AWI-SAB (PC)
Plaintiff, v. J. HUEWE, et al., Defendants.)) FINDINGS AND RECOMMENDATIONS) RECOMMENDING DISMISSING CERTAIN) CLAIMS FOR FAILURE TO STATE A CLAIM) (ECF Nos. 12, 13)) THIRTY DAY DEADLINE)

Plaintiff Derryl Tyrone Foster is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed a complaint in this action on December 8, 2016, which was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 5, 2017, Plaintiff's complaint was screened and was found to state a cognizable claim against Defendants Huewe and Vargas for failure to protect, and Defendants Cordova and McIntarr for excessive force in violation of the Eighth Amendment. Plaintiff was ordered to either file an amended complaint or notify the Court that he wished to proceed only on the claims found to be cognizable. On April 19, 2017, Plaintiff filed a notice that he did not wish to amend his complaint and wants to proceed on the claims found to be cognizable in the April 5, 2017 screening order.

The Court has found that Plaintiff has stated a cognizable claim against Defendants Huewe and Vargas for failure to protect, and Defendants Cordova and McIntarr for excessive force in violation of

the Eighth Amendment, but Plaintiff failed to state any other cognizable claims. Accordingly, IT IS HEREBY RECOMMENDED that:

- This action proceed against Defendants Huewe and Vargas for failure to protect, and Defendants Cordova and McIntarr for excessive force in violation of the Eighth Amendment; and
- 2. All other claims be dismissed from the action for failure to state a cognizable claim for relief.

This findings and recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within thirty (30) days after being served with this findings and recommendation, Plaintiff may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's findings and recommendation." Plaintiff is 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, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

 $_{16}$ | IT IS SO ORDERED.

Dated: **April 20, 2017**

UNITED STATES MAGISTRATE JUDGE