1 2 3 4 5 6 UNITED STATES DISTRICT COURT 7 EASTERN DISTRICT OF CALIFORNIA 8 9 JOSE ROBERTO ZAIZA. CASE No. 1:16-cv-01862-LJO-MJS (PC) 10 Plaintiff, FINDINGS AND RECOMMENDATIONS RECOMMENDING THAT THIS ACTION 11 ٧. PROCEED ONLY ON COGNIZABLE **EIGHTH AMENDMENT CLAIM AND** 12 C. GUTHRIE, et al., THAT ALL OTHER CLAIMS AND 13 **DEFENDANTS BE DISMISSED** Defendants. 14 (ECF No. 1) 15 **FOURTEEN** (14)DAY **OBJECTION** DEADLINE 16 17 18 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil 19 rights action brought pursuant to 42 U.S.C. § 1983. On January 30, 2017, the Court 20 screened Plaintiff's complaint and found that it states a cognizable Eighth Amendment 21 excessive force claim for damages against Defendant Guthrie, but no other cognizable 22 claims. (ECF No. 10.) Plaintiff was ordered to file an amended complaint or notify the 23 Court in writing if he wished to proceed only on the cognizable claim. (Id.) Plaintiff 24 responded that he does not intend to amend and instead wishes to proceed with the 25 cognizable claim. (ECF No. 11)

Based on the foregoing, it is HEREBY RECOMMENDED that:

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1. This action proceed only on the cognizable Eighth Amendment claim for

damages against Defendant Guthrie; and

2. All other claims and defendants be dismissed from this action for failure to state a claim.

These 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, Plaintiff may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." 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, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: February 28, 2017 Isl Michael J. Seng
UNITED STATES MAGISTRATE JUDGE