UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

JOSE ROBERTO ZAIZA,

Plaintiff,

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C. GUTHRIE, et al.,

Defendants.

CASE No. 1:16-cv-01862-LJO-MJS (PC)

ORDER ADOPTING FINDINGS AND RECOMMENDATIONS FOR ACTION TO PROCEED ONLY ON COGNIZABLE EIGHTH AMENDMENT CLAIM AND THAT ALL OTHER CLAIMS AND DEFENDANTS BE DISMISSED

(ECF Nos. 1, 12)

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 of the United States District Court for the Eastern District of California.

On January 30, 2017, the Court screened Plaintiff's complaint and found that it states a cognizable Eighth Amendment excessive force claim for damages against Defendant Guthrie, but no other cognizable claims. (ECF No. 10.) Plaintiff was ordered to file an amended complaint or notify the Court in writing if he wished to proceed only on the cognizable claim. (Id.) Plaintiff responded that he does not intend to amend and instead wishes to proceed with the cognizable claim. (ECF No. 11) Accordingly, on February 28, 2017, the Magistrate Judge issued findings and recommendations for the

1 action to proceed only on the Eighth Amendment excessive force claim against 2 Defendant Guthrie, and for all other claims and defendants to be dismissed. (ECF No. 3 12.) Plaintiff filed no objections. 4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has 5 conducted a de novo review of this case. Having carefully reviewed the entire file, the 6 Court finds the findings and recommendations to be supported by the record and by 7 proper analysis. 8 Accordingly, it is HEREBY ORDERED that: 9 1. The Court adopts in full the findings and recommendations filed February 10 28, 2017 (ECF No. 12); 11 2. This action shall proceed only against Defendant Guthrie on a claim for damages for excessive force in violation of the Eighth Amendment; 12 13 3. All other claims and defendants are dismissed from this action for failure to 14 state a claim; and 4. The matter is referred back to the Magistrate Judge for further 15 16 proceedings. 17 18 IT IS SO ORDERED. 19 Dated: **March 22, 2017** /s/ Lawrence J. O'Neill 20 UNITED STATES CHIEF DISTRICT JUDGE 21 22 23 24 25 26 27

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