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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 LARRY WILLIAM CORTINAS,

12 Plaintiff,

13 vs.

14 M. HUERTA, et al.,

15 Defendants.
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1:17-cv-00130-AWI-GSA-PC

**ORDER WITHDRAWING FINDINGS
AND RECOMMENDATIONS ENTERED
ON JULY 24, 2019, DUE TO PARTIES'
POST-FINDINGS-AND-
RECOMMENDATIONS ARGUMENTS**

(ECF No. 62.)

17 Larry William Cortinas (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma*
18 *pauperis* with this civil rights action filed pursuant to 42 U.S.C. § 1983. This action now
19 proceeds with Plaintiff’s original Complaint, filed on January 30, 2017, against Correctional
20 Officers J. Scalia and M. Huerta (“Defendants”) for use of excessive force in violation of the
21 Eighth Amendment.¹ (ECF No. 1.)

22 On July 24, 2019, Defendants filed a motion for summary judgment on the ground that
23 the undisputed facts show that Plaintiff’s claims are barred under the favorable termination
24 doctrine in Heck v. Humphrey, 512 U.S. 477 (1994). (ECF No. 51.) On November 21, 2019,
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27 ¹ On September 13, 2017, the court issued an order for this case to proceed only against defendants
28 Scalia and Huerta for use of excessive force and against defendant Scalia for retaliation. (ECF No. 11.) On August
20, 2018, the court dismissed Plaintiff’s retaliation claim against defendant Scalia based on Plaintiff’s failure to
exhaust administrative remedies. (ECF No. 37.)

1 the court entered findings and recommendations, recommending that Defendants’ motion for
2 summary judgment be denied. (ECF No. 62.) On December 5, 2019, Defendants filed objections
3 to the findings and recommendations. (ECF No. 63.) On February 18, 2020, Plaintiff filed a
4 “Declaration of New Facts Which Moot the Heck Bar Question.” (ECF No. 64.) On March 3,
5 2020, Defendants filed a response to Plaintiff’s declaration. (ECF No. 65.)

6 In light of the parties’ post-findings-and-recommendations arguments, the court shall
7 withdraw its findings and recommendations of November 21, 2019, and enter new findings and
8 recommendations in due course.

9 Accordingly, IT IS HEREBY ORDERED that the court’s findings and recommendations,
10 entered on July 24, 2019, are WITHDRAWN.

11 IT IS SO ORDERED.

12 Dated: March 20, 2020

13 /s/ Gary S. Austin
14 UNITED STATES MAGISTRATE JUDGE