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2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF CALIFORNIA

4
5 DOMINIC CARTER,

6 Plaintiff,

7 v.

8 H. FLORES, et al.,

9 Defendants.

1:17-cv-00245-DAD-EPG (PC)

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE
PROCEED AGAINST DEFENDANTS
LONGORIA AND FLORES ON A CLAIM
FOR EXCESSIVE FORCE IN VIOLATION
OF THE EIGHTH AMENDMENT, AND
THAT ALL OTHER CLAIMS AND
DEFENDANTS BE DISMISSED WITH
PREJUDICE
(ECF NOS. 1 & 7)

OBJECTIONS, IF ANY, DUE WITHIN
TWENTY-ONE DAYS

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13 This is a civil action filed by Dominic Carter (“Plaintiff”), a state prisoner proceeding
14 *pro se*. This action was initiated by the filing of a civil complaint in Kings County Superior
15 Court on November 23, 2016 (Case #16-C0379). (ECF No. 1, p. 4). On February 16, 2017,
16 defendants Flores, Godwin, Goree, Longoria, and Pacillas removed the case to federal court by
17 filing a notice of removal of action pursuant to 28 U.S.C. § 1441(a). (Id. at pgs. 1-2). Within
18 the notice of removal, these defendants requested that the Court screen Plaintiff’s complaint
19 under 28 U.S.C. § 1915A. (Id. at p. 2). On February 21, 2017, defendant Brown filed a joinder
20 to the notice of removal and request for screening. (ECF No. 5). On February 23, 2017, the
21 Court granted the request for the Court to screen the complaint. (ECF No. 6).

22 On March 31, 2017, the Court screened Plaintiff’s complaint. (ECF No. 7). The Court
23 found that Plaintiff stated a cognizable claim against defendants Longoria and Flores for
24 excessive force in violation of the Eighth Amendment. (Id.). The Court also found that the
25 complaint stated no other cognizable claims against these defendants, or against any other
26 defendant. (Id.). The Court allowed Plaintiff to choose between proceeding only on the claim
27 for unconstitutional excessive force against defendants Longoria and Flores, amending the
28 complaint if Plaintiff believed that additional facts would establish additional claims or claims

1 against additional defendants, or standing on the complaint subject to the Court issuing findings
2 and recommendations to the assigned district judge consistent with the screening order. (Id.).
3 On April 10, 2017, Plaintiff notified the Court that he is willing to proceed only on the Eighth
4 Amendment excessive force claim against defendants Longoria and Flores. (ECF No. 9).

5 Accordingly, for the reasons laid out in the Court's order that was entered on March 21,
6 2017 (ECF No. 7), it is **HEREBY RECOMMENDED** that:

- 7 1. This case proceed only on Plaintiff's claim for excessive force in violation of the
8 Eighth Amendment against defendants Longoria and Flores;
- 9 2. All other claims and defendants be dismissed from this action, with prejudice;
10 and
- 11 3. If these findings and recommendations are adopted, defendants Longoria and
12 Flores be given thirty days from the date of service of the order adopting the
13 findings and recommendations in which to file a responsive pleading to the
14 complaint.

15 These Findings and Recommendations will be submitted to the United States District
16 Court Judge assigned to this action pursuant to the provisions of 28 U.S.C. § 636 (b)(1).
17 Within **twenty-one (21) days** after being served with a copy of these Findings and
18 Recommendations, any party may file written objections with the court and serve a copy on all
19 parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and
20 Recommendations." Any reply to the objections shall be served and filed within **ten (10) days**
21 after service of the objections. The parties are advised that failure to file objections within the
22 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d
23 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

24
25 IT IS SO ORDERED.

26 Dated: April 11, 2017

27 /s/ Eric P. Grosjean
28 UNITED STATES MAGISTRATE JUDGE