1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 LARRY SMITH, No. 1:17-cv-00436-DAD-GSA (PC) 12 Plaintiff. ORDER ADOPTING FINDINGS AND RECOMMENDATIONS 13 v. 14 SGT. J. GONZALES, et al., (Doc. No. 19) 15 Defendants. 16 17 Plaintiff Larry Smith is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States 18 19 Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 20 On April 19, 2018, the assigned magistrate judge entered findings and recommendations, 21 recommending that this case proceed on the claims found cognizable and that plaintiff's 22 remaining claims be dismissed from this action based on plaintiff's failure to state a claim. (Doc. 23 No. 19.) Those findings and recommendations were served on plaintiff and contained notice that 24 any objections thereto were to be filed within fourteen (14) days after service. (Id. at 3.) On May 7, 2018, plaintiff filed objections to the findings and recommendations. (Doc. 25 26 No. 20.) In response to plaintiff's objections, the magistrate judge issued an order requiring 27 plaintiff to clarify whether he objected to the findings and recommendations and sought leave to 28 file a second amended complaint, or whether he was willing to proceed only on the claims found 1

cognizable. (Doc. No. 22.) On June 13, 2018, plaintiff notified the court in writing that he does not wish to file a second amended complaint and is willing to proceed only on the claims found cognizable by the court at screening, dismissing all remaining claims. (Doc. No. 24.)

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and proper analysis.

## Accordingly,

- The findings and recommendations issued by the magistrate judge on April 19,
  2018 (Doc. No. 19) are adopted in full;
- 2. This case now proceeds only against defendants Sergeant Gonzales, Correctional Officer ("C/O") Johnson, C/O Castro, C/O Miner, C/O Florez, and C/O Potzernitz for use of excessive force in violation of the Eighth Amendment; against defendants C/O Fritz and C/O Scaife for failure to protect plaintiff in violation of the Eighth Amendment; and against defendant Sergeant Gonzales for retaliation in violation of the First Amendment;
- 3. Defendant C/O Gonzales is dismissed from this action based on plaintiff's failure to state any claims against him;
- 4. Plaintiff's claims relating to an alleged improper strip search, due process violations, false reports, deprivation of personal property, detention in administrative segregation, loss of good-time credits, loss of privileges, improper appeals process, and cover-up are dismissed, based on plaintiff's failure to state a claim upon which relief may be granted; and
- 5. This case is referred back to the magistrate judge for further proceedings, including initiation of service of process.

IT IS SO ORDERED.

Dated: October 4, 2018