2 3 4 UNITED STATES DISTRICT COURT 5 EASTERN DISTRICT OF CALIFORNIA 6 7 DARRION LARRY ALEXANDER, Case No.: 1:17-cv-00804-SAB (PC) 8 ORDER DIRECTING OFFICE OF THE CLERK Plaintiff. TO RANDOMLY ASSIGN A DISTRICT JUDGE 9 TO THIS ACTION v. 10 FINDINGS AND RECOMMENDATIONS G. YBARRA, et al., RECOMMENDING DISMISSAL OF CERTAIN 11 Defendants. **CLAIMS** 12 [ECF Nos. 1, 14, 15] 13 14 Plaintiff Darrion Larry Alexander is appearing pro se and in forma pauperis in this civil rights 15 action pursuant to 42 U.S.C. § 1983. 16 On November 21, 2017, the Court screened Plaintiff's complaint and found that Plaintiff stated 17 a cognizable claim against Defendants A. Johnson, G. Ybarra, E. Lopez, M. Garcia, E. Barron, O. 18 Delgado, and T. Lee for excessive force in violation of the Eighth Amendment. (ECF No. 14.) 19 However, Plaintiff has not sufficiently alleged facts to state a cognizable claim for deliberate 20 indifference to a serious medical need against Defendant nurse J. Presson. (Id.) Plaintiff was given the 21 opportunity to amend the complaint or notify the Court of his intent to proceed only on the excessive 22 force claim against Defendants A. Johnson, G. Ybarra, E. Lopez, M. Garcia, E. Barron, O. Delgado, 23 and T. Lee. (Id.) On December 11, 2017, Plaintiff notified the Court of his intent to proceed only on 24 the claim of excessive force. (ECF No. 15.) 25 /// 26 /// 27 /// 28

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Accordingly, for the reasons explained in the Court's November 21, 2017 screening order, it is HEREBY RECOMMENDED that:

- 1. This action proceed on Plaintiff's claim of excessive force against Defendants A. Johnson, G. Ybarra, E. Lopez, M. Garcia, E. Barron, O. Delgado, and T. Lee;
- 2. Plaintiff's claim of deliberate indifference against nurse J. Presson be dismissed for failure to state a cognizable claim for relief; and
 - 3. The Office of the Clerk is directed to randomly assign this action to a District Judge.

This Findings and Recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within **fourteen (14) days** after being served with this Findings and Recommendation, Plaintiff may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." 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, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: **December 12, 2017**

UNITED STATES MAGISTRATE JUDGE

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