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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

AUSTIN THOMAS,

 Plaintiff,

 v.

I. LOZANO, et al.,

 Defendants.

Case No. 1:17-cv-01068-AWI-BAM (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATION, AND DISMISSING
ACTION, WITHOUT PREJUDICE, FOR
FAILURE TO PROSECUTE AND FAILURE
TO OBEY COURT ORDER

(ECF No. 12)

Plaintiff Austin Thomas is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 8, 2019, the Court issued a screening order finding that Plaintiff had stated cognizable claims for excessive force in violation of the Eighth Amendment against Defendant Lozano and for failure to intervene in violation of the Eighth Amendment against Defendant Shirk, but failed to state any other claims against any other defendants. (ECF No. 11.) The Court ordered Plaintiff to either, within thirty days, file a second amended complaint or notify the Court in writing that he does not wish to file a second amended complaint and is willing to proceed only on the claims against Defendants Lozano and Shirk that the Court identified as cognizable. (*Id.* at 9.) Plaintiff was expressly warned that his failure to comply with the Court’s order would result in a recommendation to dismiss this action, without prejudice, for failure to obey a court order

1 and failure to prosecute. (Id. at 10.)

2 On May 31, 2019, following Plaintiff's failure to file a second amended complaint or a
3 written notice to proceed only on the claims found to be cognizable by the Court, the Magistrate
4 Judge issued findings and recommendation to dismiss this action, without prejudice, for
5 Plaintiff's failure to obey a court order and failure to prosecute this action. (ECF No. 12.) The
6 findings and recommendation were served on Plaintiff and contained notice that any objections
7 thereto were to be filed within fourteen (14) days after service. (Id. at 4.)

8 On June 20, 2019, the May 31, 2019 findings and recommendation were returned as
9 "Undeliverable, Inmate Paroled." More than sixty-three days have passed since the findings and
10 recommendation were returned by the U.S. Postal Service, and Plaintiff has failed to file a notice
11 of change of address or otherwise communicate with the Court in any way. Local Rule 183(b).

12 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
13 de novo review of this case. Having carefully reviewed the entire file, the Court finds that the
14 Magistrate Judge's findings and recommendation are supported by the record and proper analysis.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. The findings and recommendation issued on May 31, 2019 (and filed on June 3,
17 2019), (ECF No. 12), are adopted in full;
- 18 2. This action is dismissed, without prejudice, for failure to prosecute and failure to
19 obey a court order; and
- 20 3. The Clerk of the Court is directed to close this case.

21 IT IS SO ORDERED.

22 Dated: January 23, 2020

23 
24 SENIOR DISTRICT JUDGE