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

BARRY LEE BROOKINS,	)	Case No. 1:17-cv-01675-AWI-SAB (PC)
	)	
Plaintiff,	)	
	)	ORDER ADOPTING FINDINGS AND
v.	)	RECOMMENDATIONS AS MODIFIED HEREIN,
	)	DISMISSING CERTAIN DEFENDANTS, AND
M. HERNANDEZ, et al.,	)	REFERRING THE MATTER BACK TO THE
	)	MAGISTRATE JUDGE FOR INITIATION OF
Defendants.	)	SERVICE OF PROCESS
	)	
	)	[ECF Nos. 12, 13, 14]

Plaintiff Barry Lee Brookins is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

On June 15, 2018, the Magistrate Judge filed Findings and Recommendations recommending that this action proceed on Plaintiff’s cruel and unusual punishment claim against Defendants Officer M Hernandez, Lieutenant E. Williams, Captain Williams, Officer L. Sanchez, Officer Galvenson, Officer Schleesman, Sergeant Crane, and Sergeant Salvado. (ECF No. 13.) The Findings and Recommendations also recommended Defendants Livingston, Scaife, Sherman, Voong, Foston and Wan be dismissed from the action for failure to state a cognizable claim for relief. (Id.) The Findings and Recommendations were served on Plaintiff and contained notice that objections were to be filed within twenty-one (21) days. (Id.) Plaintiff timely filed objections on July 2, 2018. (ECF No. 14.) In his objections, Plaintiff contends that Defendant S. Marsh authorized the application of leg restraints on February 19, 2017, and he therefore states a cognizable claim against Marsh. The Court has

1 reviewed the first amended complaint and agrees that Plaintiff also states a cognizable claim against  
2 Defendant S. Marsh for cruel and unusual punishment.

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a de  
4 novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and  
5 Recommendations to be supported by the record and by proper analysis.

6 Accordingly, it is HEREBY ORDERED that:

7 1. The June 15, 2018, Findings and Recommendations (ECF No. 13) are adopted as  
8 modified herein;

9 2. This action shall proceed against Defendants Officer M Hernandez, Lieutenant E.  
10 Williams, Captain Williams, Officer L. Sanchez, Officer Galvenson, Officer Schleesman, Sergeant  
11 Crane, Sergeant Salvado, and S. Marsh for cruel and unusual punishment;

12 3. Defendants Livingston, Scaife, Sherman, Voong, Foston and Wan are dismissed from  
13 the action for failure to state a cognizable claim for relief; and

14 4. The matter is referred back to the assigned Magistrate Judge for initiation of service of  
15 process.

16  
17 IT IS SO ORDERED.

18 Dated: August 20, 2018

  
\_\_\_\_\_  
19 SENIOR DISTRICT JUDGE