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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JESUS A. NUNEZ,
Plaintiff,
vs.
KAYLEEN POWELL, et al.,
Defendants.

1:18-cv-00213-LJO-GSA-PC

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE
PROCEED ONLY WITH PLAINTIFF’S
MEDICAL CLAIM AGAINST
DEFENDANT KOKOR, AND THAT ALL
OTHER CLAIMS AND DEFENDANTS BE
DISMISSED FROM THIS CASE FOR
PLAINTIFF’S FAILURE TO STATE A
CLAIM**

**OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN (14) DAYS**

Jesus A. Nunez (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On January 10, 2018, the court for the Central District of California opened this case with a letter by Melissa Nunez (Plaintiff’s daughter) and an attached declaration by Plaintiff. (ECF No. 2.) On January 29, 2018, Plaintiff filed the original Complaint for this action. (ECF No. 8.) On February 8, 2018, the case was transferred to this court. (ECF No. 11.)

1 On March 26, 2018, the court screened the Complaint and issued an order dismissing
2 the Complaint for failure to state a claim, with leave to amend. (ECF No. 16.) On April 26,
3 2018, Plaintiff filed a First Amended Complaint. (ECF No. 18.) The First Amended
4 Complaint brought medical claims against defendants, Winfred Koker (“Kokor”) and Kayleen
5 Powell (“Powell”), and an excessive force claim against defendant Powell, under the Eighth
6 Amendment.

7 On November 6, 2018, the court screened the First Amended Complaint and found only
8 one cognizable claim, a medical claim against defendant Kokor under the Eighth Amendment.
9 (ECF No. 20.) The court issued an order requiring Plaintiff to either file a Second Amended
10 Complaint or notify the court that he is willing to proceed only with the medical claim against
11 defendant Kokor. (Id.) Plaintiff was also advised in the order that his requests for attorney’s
12 fees and declaratory relief in this case would not be granted. (Id.)

13 On November 26, 2018, Plaintiff filed a notice informing the court that he is willing to
14 proceed only on the medical claim against defendant Kokor. (ECF No. 21.)

15 Based on the foregoing, it is **HEREBY RECOMMENDED** that:

- 16 1. This action proceed only against defendant Dr. Kokor on Plaintiff’s medical
17 claim under the Eighth Amendment;
- 18 2. All remaining claims and defendants be dismissed from this action;
- 19 3. Plaintiff’s excessive force claim and claims for declaratory relief and attorney’s
20 fees be dismissed from this action based on Plaintiff’s failure to state any claims
21 upon which relief may be granted;
- 22 4. Defendant Kayleen Powell be dismissed from this action based on Plaintiff’s
23 failure to state any claims against her; and
- 24 5. This case be referred back to the Magistrate Judge for further proceedings,
25 including initiation of service of process.

26 These Findings and Recommendations will be submitted to the United States District
27 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
28 fourteen (14) days after being served with these Findings and Recommendations, Plaintiff may

1 file written objections with the Court. The document should be captioned “Objections to
2 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
3 objections within the specified time may waive the right to appeal the District Court’s order.
4 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

5
6 IT IS SO ORDERED.

7 Dated: November 28, 2018

/s/ Gary S. Austin
8 UNITED STATES MAGISTRATE JUDGE