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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA

8
9 MARK LEE BARBOZA,
10 Plaintiff,
11 v.
12 SEAN STENGEL,
13 Defendant.

Case No. 1:18-cv-00580-LJO-EPG (PC)
FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT ALL CLAIMS
BE DISMISSED, EXCEPT FOR
PLAINTIFF'S CLAIM AGAINST
DEFENDANT SEAN STENGEL FOR
EXCESSIVE FORCE IN VIOLATION OF
THE EIGHTH AMENDMENT
(ECF NOS. 1 & 8)
OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN DAYS

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17 Mark Barboza ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis*
18 in this civil rights action filed pursuant to 42 U.S.C. § 1983.

19 Plaintiff filed the complaint commencing this action on April 30, 2018. (ECF No. 1).
20 The Court screened Plaintiff's complaint. (ECF No. 8). The Court found that Plaintiff's
21 complaint "states a cognizable claim against Defendant Sean Stengel for excessive force in
22 violation of the Eighth Amendment." (Id. at 10). The Court also found that Plaintiff failed to
23 state any other cognizable claims. (Id.)

24 The Court allowed Plaintiff to choose between proceeding only on the claim found
25 cognizable by the Court in the screening order, amending the complaint, or standing on the
26 complaint subject to the Court issuing findings and recommendations to a district judge
27 consistent with the screening order. (Id. at 11-12). On October 1, 2018, Plaintiff notified the
28 Court that he is willing to proceed only on the claim found cognizable by the screening order.

1 (ECF No. 9).

2 Accordingly, for the reasons set forth in the Court’s screening order that was entered on
3 September 6, 2018 (ECF No. 8), and because Plaintiff has notified the Court that he is willing
4 to proceed only his claim against Defendant Sean Stengel for excessive force in violation of the
5 Eighth Amendment (ECF No. 9), it is **HEREBY RECOMMENDED** that all claims be
6 dismissed, except for Plaintiff’s claim against Defendant Sean Stengel for excessive force in
7 violation of the Eighth Amendment.

8 These findings and recommendations are submitted to the United States district judge
9 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
10 **(14) days** after being served with these findings and recommendations, Plaintiff may file
11 written objections with the Court. The document should be captioned “Objections to
12 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
13 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
14 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
15 (9th Cir. 1991)).

16
17 IT IS SO ORDERED.

18 Dated: October 3, 2018

18 /s/ Eric P. Gray
19 UNITED STATES MAGISTRATE JUDGE