1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 EASTERN DISTRICT OF CALIFORNIA 10 11 LAWRENCE CHRISTOPHER SMITH, Case No. 1:19-cv-00271-AWI-BAM (PC) 12 Plaintiff. ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT 13 v. (Doc. No. 26) 14 CAMBPELL, et al., ORDER ADOPTING FINDINGS AND RECOMMENDATIONS REGARDING 15 Defendants. DISMISSAL OF CERTAIN CLAIMS AND **DEFENDANTS** 16 (Doc. No. 27) 17 Plaintiff Lawrence Christopher Smith ("Plaintiff") is a state prisoner proceeding pro se 18 19 and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. 20 On September 28, 2020, the assigned Magistrate Judge screened the second amended 21 complaint and issued an order denying Plaintiff's motion for leave to amend and supplement the 22 complaint. (Doc. No. 26.) The Magistrate Judge further issued findings and recommendations recommending that this action proceed on Plaintiff's second amended complaint on Plaintiff's 23 24 excessive force claim against Defendants Cantu, Young, and Martinez, and that all other claims and all other defendants be dismissed from this action based on Plaintiff's failure to state claims 25 26 upon which relief may be granted. (Id.) The findings and recommendations were served on 27 Plaintiff and contained notice that any objections were to be filed within fourteen days after

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service. (Id. at 17.)

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On November 19, 2020, more than a month after the deadline for filing objections, but before the Court issued an order addressing the findings and recommendations, Plaintiff filed a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e). (Doc. No. 27.) Plaintiff argues that he should be permitted to untimely file his objections because he was transferred to the custody of the Kern County Sheriff's Department before he was able to file his objections. (Id. at 5.) As the motion appears to challenge the Magistrate Judge's findings and recommendations, rather than a final ruling or judgment of the Court, the motion will be construed as Plaintiff's objections. The Court finds good cause to accept the untimely objections.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, including Plaintiff's objections, the Court finds the findings and recommendations to be supported by the record and by proper analysis.

Accordingly, IT IS HEREBY ORDERED as follows:

- 1. Plaintiff's motion to alter or amend judgment (Doc. No. 27) is denied;
- 2. The findings and recommendations (Doc. No. 26) issued on September 28, 2020, are adopted in full;
- 3. This action shall proceed on Plaintiff's second amended complaint (Doc. No. 22), filed August 31, 2020, against Defendants Cantu, Young, and Martinez for excessive force in violation of the Eighth Amendment;
- 4. All other claims and all other defendants are dismissed from this action for failure to state a claim upon which relief may be granted; and
- 5. This action is referred back to the Magistrate Judge for proceedings consistent with this order.

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25 | IT IS SO ORDERED.

26 Dated: <u>December 7, 2020</u>

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SENIOR DISTRICT JUDGE