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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KAREEM J. HOWELL,
Plaintiff,
v.
J. BURNES, *et al.*,
Defendants.

No. 1:19-cv-00556-JDP

FINDINGS AND RECOMMENDATIONS
THAT PLAINTIFF BE PERMITTED TO
PROCEED ON COGNIZABLE CLAIM AND
THAT NON-COGNIZABLE CLAIMS BE
DISMISSED WITHOUT PREJUDICE

OBJECTIONS, IF ANY, DUE IN 14 DAYS

Plaintiff Kareem J. Howell is a state prisoner proceeding without counsel in this civil rights action brought under 42 U.S.C. § 1983. On August 7, 2019, I screened Howell’s complaint and found that he stated an excessive force and a First Amendment claim against defendant Burnes, as well as a deliberate indifference claim against defendant Magallanes, but no other claims. *See* ECF No. 9. That order gave Howell three options: (1) proceed only on the claims found cognizable, (2) amend the complaint to add additional facts to make out additional claims, or (3) stand on the current complaint subject to dismissal of claims and defendants. On August 23, 2019, Howell filed a notice indicating his desire to proceed only on the claims deemed cognizable. ECF No. 10. Accordingly, I recommend that his remaining claims be dismissed without prejudice.

RECOMMENDATION

Under 28 U.S.C. § 636(c)(1), all parties named in a civil action must consent to a

1 magistrate judge's jurisdiction before that jurisdiction vests for "dispositive decisions." *Williams*
2 *v. King*, 875 F.3d 500, 504 (9th Cir. 2017). No defendant has appeared or consented to a
3 magistrate judge's jurisdiction in this case, so any dismissal of a claim requires an order from a
4 district judge. *Id.* Thus, the undersigned submits the following findings and recommendations
5 under 28 U.S.C. § 636(b)(1):

- 6 1. Plaintiff states a cognizable excessive force claim and a First Amendment claim
7 against defendant J. Burnes, as well as a deliberate indifference claim against
8 defendant Magallanes.
- 9 2. Plaintiff's remaining claims should be dismissed without prejudice.

10 Within fourteen (14) days of service of these findings and recommendations, plaintiff may
11 file written objections with the court. If plaintiff files such objections, he should do so in a
12 document captioned "Objections to Magistrate Judge's Findings and Recommendations."
13 Plaintiff is advised that failure to file objections within the specified time may result in the waiver
14 of rights on appeal. *See Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (*citing*
15 *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

16 IT IS SO ORDERED.
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18 Dated: September 5, 2019
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20 UNITED STATES MAGISTRATE JUDGE
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22 No. 205
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