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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JONATHAN DEWITT MCDOWELL,
Plaintiff,
v.
KERN VALLEY STATE PRISON, et al.,
Defendants.

Case No. 1:20-cv-01036-DAD-SKO (PC)

**FINDINGS AND RECOMMENDATIONS
TO DISMISS NON-COGNIZABLE
CLAIMS AGAINST DEFENDANTS
CUDAL AND WELCH**

14-DAY DEADLINE

On May 24, 2022, the Court screened Plaintiff's second amended complaint, focused solely on the claims asserted against newly added Defendants J. Cudal and Welch,¹ and found it states cognizable claims of excessive force against Defendant Welch and deliberate indifference to serious medical need against Defendant Cudal, in their individual capacities. (Doc. 52.) The Court found that the remaining claims asserted against newly added Defendants Cudal and Welch were not cognizable. (*Id.*) The Court therefore directed Plaintiff, within 21 days, to file a third amended complaint curing the deficiencies in his pleading, or to notify the Court that he wishes to proceed only on the claims found cognizable as to the newly added Defendants, or to voluntarily dismiss the action. (*Id.* at 10.)

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¹ Defendants Atkinson, Furlong, Harman, Johnson, and Loera answered Plaintiff's complaint on July 28, 2021. (*See* Docs. 28 & 30.) Defendant Hernandez was dismissed from the action on October 20, 2021. (Doc. 40.)

1 On June 8, 2022, Plaintiff filed notice that he wished to proceed on the claims found
2 cognizable against newly added Defendants Cudal and Welch. (Doc. 53.)

3 Accordingly, the Court RECOMMENDS that the claims in Plaintiff’s second amended
4 complaint, *asserted against newly added Defendants Cudal and Welch only*, be DISMISSED,
5 *except* for the claim of excessive force against Defendant Welch, and the claim of deliberate
6 indifference to serious medical need against Defendant Cudal, in their individual capacities,
7 pursuant to 42 U.S.C. § 1983—as set forth in the second amended complaint.

8 These Findings and Recommendations will be submitted to the United States District
9 Judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of
10 service of these Findings and Recommendations, Plaintiff may file written objections with the
11 Court. The document should be captioned, “Objections to Magistrate Judge’s Findings and
12 Recommendations.” Failure to file objections within the specified time may result in waiver of
13 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
14 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

15 IT IS SO ORDERED.

16 Dated: **June 14, 2022**

17 */s/ Sheila K. Oberto*
18 UNITED STATES MAGISTRATE JUDGE