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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MATTHEW H. BECKETT,

Plaintiff,

v.

SCALIA, *et al.*,

Defendants.

Case No. 1:20-cv-01468-JLT-CDB (PC)

**FINDINGS AND RECOMMENDATIONS
TO DISMISS CERTAIN CLAIMS AND
DEFENDANTS FOLLOWING
SCREENING OF PLAINTIFF’S SECOND
AMENDED COMPLAINT**

14-DAY OBJECTION PERIOD

Plaintiff Matthew H. Beckett is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action filed under 42 U.S.C. § 1983.

I. INTRODUCTION

On October 31, 2023, the Court issued its Third Screening Order. (Doc. 29.) The Court found Plaintiff’s second amended complaint plausibly alleged Eighth Amendment excessive force claims against Defendants Scalia, Madrigal and Hernandez (Claim One), Eighth Amendment failure to protect/failure to intervene claims against Defendant Hackworth (Claim One), and Eighth Amendment deliberate indifference to serious medical needs claims against Defendants Scalia, Madrigal, Hernandez and Hackworth (Claim Four); however, the Court also held the

1 second amended complaint failed to allege any other cognizable claim against any other named
2 Defendant. (*Id.* at 4-17.) Plaintiff was ordered to select one of the following three options within
3 21 days of the date of service of the order: (1) to notify the Court in writing that he does not wish
4 to file a third amended complaint and he is willing to proceed *only* on the Eighth Amendment
5 excessive force claims against Defendants Scalia, Madrigal and Hernandez, Eighth Amendment
6 failure to protect/failure to intervene claims against Defendant Hackworth, and Eighth
7 Amendment deliberate indifference to serious medical needs claims against Defendants Scalia,
8 Madrigal, Hernandez and Hackworth with the remaining claims against any other defendants to
9 be dismissed; or (2) to file a third amended complaint curing the deficiencies identified by the
10 Court in the screening order; or (3) to file a notice of voluntary dismissal. (*Id.* at 18-19.)

11 On November 29, 2023, Plaintiff filed a notice indicating he was willing to proceed only
12 on the claims found cognizable by the Court. (Doc. 32.)

13 **II. CONCLUSION AND RECOMMENDATIONS**

14 For the reasons set forth in the Court’s Third Screening Order, the Court
15 **RECOMMENDS** that:

- 16 1. This action **PROCEED** *only* on Plaintiff’s Eighth Amendment excessive force claims
17 against Defendants Scalia, Madrigal and Hernandez (Claim One); Eighth Amendment
18 failure to protect/failure to intervene claims against Defendant Hackworth (Claim
19 One); and Eighth Amendment deliberate indifference to serious medical needs claims
20 against Defendants Scalia, Madrigal, Hernandez and Hackworth (Claim Four),
21 pursuant to 42 U.S.C. § 1983;
- 22 2. Defendant L. Hurtado be **DISMISSED** from this action; and
- 23 3. Any remaining claims in Plaintiff’s second amended complaint be **DISMISSED**.

24 These Findings and Recommendations will be submitted to the district judge assigned to
25 this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of service of these
26 Findings and Recommendations, a party may file written objections with the Court. The
27 document should be captioned, “Objections to Magistrate Judge’s Findings and
28 Recommendations.” Failure to file objections within the specified time may result in waiver of

1 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
2 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

3 IT IS SO ORDERED.

4 Dated: November 30, 2023


5 UNITED STATES MAGISTRATE JUDGE

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