1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 DOMINIQUE ZAFIR CASEY, Case No. 1:21-cv-00855-NODJ-SKO (PC) 12 Plaintiff. FINDINGS AND RECOMMENDATIONS TO DISMISS CERTAIN CLAIMS AND 13 v. **DEFENDANTS** 14 HADDAD, et al., 14-DAY OBJECTION PERIOD 15 Defendants. 16 17 Plaintiff Dominique Zafir Casey is a state prisoner proceeding pro se in this civil rights 18 action brought pursuant to 42 U.S.C. § 1983. 19 I. RELEVANT BACKGROUND 20 On November 16, 2023, the Court issued its Second Screening Order. (Doc. 25.) The 21 Court found Plaintiff stated a cognizable Eighth Amendment claims against Defendants Agatar, 22 Castillo, Castro, Haddad and Fernandez, but failed to allege any other cognizable claim against 23 any named defendant. (Id. at 4-7.) Plaintiff was directed to do one of the following within 21 24 days: (1) notify the Court he did not wish to file a second amended complaint and instead was 25 willing to proceed only on the Eighth Amendment excessive force claims against Defendants 26 Castillo, Castro and Fernandez, and failure to intervene claims against Defendants Agatar and

Haddad, the remaining claims to be dismissed; or (2) file a second amended complaint curing the

deficiencies identified in the Court's order, or (3) file a notice of voluntary dismissal. (*Id.* at 7-9.)

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1 On December 7, 2023, Plaintiff filed a notice indicating his wish to proceed only on the 2 claim found cognizable by the Court. (See Doc. 27.) 3 II. **CONCLUSION AND RECOMMENDATIONS** 4 For the foregoing reasons, the Court **RECOMMENDS** that: 5 1. This action **PROCEED** only on Plaintiff's Eighth Amendment excessive force claims 6 against Defendants Castillo, Castro and Fernandez, and failure to intervene claims 7 against Defendants Agatar and Haddad; 8 2. Defendant John Doe be **DISMISSED** from this action; and 9 3. Any remaining claims in Plaintiff's first amended complaint be **DISMISSED**. 10 These Findings and Recommendations will be submitted to the district judge assigned to 11 this case, pursuant to 28 U.S.C. § 636(b)(l). Within 14 days of the date of service of these 12 Findings and Recommendations, a party may file written objections with the Court. The 13 document should be captioned, "Objections to Magistrate Judge's Findings and 14 Recommendations." Failure to file objections within the specified time may result in waiver of 15 rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. 16 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)). 17 IT IS SO ORDERED. 18 Dated: **December 11, 2023** Ist Sheila K. Oberto 19 UNITED STATES MAGISTRATE JUDGE 20 21 22 23 24 25 26 27 28