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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RICHARD LEE THOMAS,  
  
Plaintiff,  
  
v.  
  
KERN VALLEY STATE PRISON, et al.,  
  
Defendants.

Case No.: 1:21-cv-01675-SKO (PC)

**FINDINGS AND RECOMMENDATIONS TO  
DISMISS CERTAIN CLAIMS AND  
DEFENDANTS**

**14-DAY OBJECTION PERIOD**

Clerk of the Court to Assign District Judge

Plaintiff Richard Lee Thomas is proceeding pro se and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983.

**I. RELEVANT BACKGROUND**

On November 2, 2023, the Court issued its Second Screening Order. (Doc. 14.) The Court found that Plaintiff stated cognizable Eighth Amendment excessive force claims against Defendants Peralta and Sandoval, and an Eighth Amendment failure to intervene claim against Defendant Melendez, but failed to state any other cognizable claim against any other defendant. (*Id.* at 3-6.) Plaintiff was directed to do one of the following within 21 days: (1) notify the Court he did not wish to file a second amended complaint and instead was willing to proceed only on the Eighth Amendment excessive force claims against Defendants Peralta and Sandoval and failure to intervene claim against Defendant Melendez, the remaining claims to be dismissed; or

1 (2) file a second amended complaint curing the deficiencies identified in the Court’s order, or (3)  
2 file a notice of voluntary dismissal. (*Id.* at 7-8.)

3 On November 21, 2023, Plaintiff filed a notice indicating his wish to proceed only on the  
4 claims found cognizable by the Court. (*See* Doc. 15 at 5 [“I am not intending to file a second  
5 amended complaint, and am willing to proceed in my Eighth Amendment claims against  
6 Corrections Officers Peralta, Sandoval and Melendez”].)

7 **II. ORDERS AND RECOMMENDATIONS**

8 The Clerk of the Court is DIRECTED to assign a District Judge to this action.

9 Further, for the reasons given above, the Court **RECOMMENDS** that:

- 10 1. This action **PROCEED** only on Plaintiff’s Eighth Amendment excessive force claims  
11 against Defendants Peralta and Sandoval and failure to intervene claim against  
12 Defendant Melendez, and the remaining claims and defendants to be dismissed;
- 13 2. The following individuals or entities be **DISMISSED** from this action:
  - 14 a. Kern Valley State Prison
  - 15 b. California Department of Corrections and Rehabilitation
  - 16 c. People of the State of California
  - 17 d. “Bertha”
  - 18 e. J. Larez
  - 19 f. J. Gurrez
  - 20 g. “Pita”
  - 21 h. Betanhurt; and
- 22 3. The following corrections be made on the docket regarding the spelling of  
23 Defendants’ names as reflected in Plaintiff’s first amended complaint:
  - 24 a. “Sandovn” be corrected to “Sandoval”
  - 25 b. “Maendrez” be corrected to “Melendez.”

26 These Findings and Recommendations will be submitted to the district judge assigned to  
27 this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of service of these  
28 Findings and Recommendations, a party may file written objections with the Court. The

1 document should be captioned, “Objections to Magistrate Judge’s Findings and  
2 Recommendations.” Failure to file objections within the specified time may result in waiver of  
3 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*  
4 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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6 IT IS SO ORDERED.

7 Dated: November 27, 2023

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

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