

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10
11 WESLEY COTTON,
12 Plaintiff,
13 v.
14 SGT. MEDINA, et al.,
15 Defendants.

Case No. 1:22-cv-00568-EPG (PC)
FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT CERTAIN
CLAIMS AND DEFENDANTS BE
DISMISSED
(ECF Nos. 1 & 9)
OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN DAYS
ORDER DIRECTING CLERK TO ASSIGN
DISTRICT JUDGE

16
17
18 Wesley Cotton (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis*
19 in this civil rights action pursuant to 42 U.S.C. § 1983, which includes state law claim(s).

20 Plaintiff filed the complaint commencing this action on May 11, 2022. (ECF No. 1).
21 The Court screened Plaintiff’s complaint. (ECF No. 9). The Court found that only the
22 following claims should proceed past the screening stage: Plaintiff’s Eighth Amendment
23 excessive force claim against Doe Defendant(s) and his failure to protect claim against
24 defendant MeDina. (Id.).

25 The Court gave Plaintiff thirty days to either: “a. File a First Amended Complaint; b.
26 Notify the Court in writing that he does not want to file an amended complaint and instead
27 wants to proceed only on his Eighth Amendment excessive force claim against Doe
28 Defendant(s) and his failure to protect claim against defendant Me[D]ina; or c. Notify the Court

1 in writing that he wants to stand on his complaint.” (Id. at 12). On August 11, 2022, Plaintiff
2 filed what the Court construes as a notice that he wants to proceed only on his Eighth
3 Amendment excessive force claim against Doe Defendant(s) and his failure to protect claim
4 against defendant MeDina. (ECF No. 10).

5 Accordingly, for the reasons set forth in the Court’s screening order that was entered on
6 August 2, 2022 (ECF No. 9), and because Plaintiff has notified the Court that he wants to
7 proceed only on his Eighth Amendment excessive force claim against Doe Defendant(s) and
8 his failure to protect claim against defendant MeDina (ECF No. 10), it is HEREBY
9 RECOMMENDED that all claims and defendants be dismissed, except for Plaintiff’s Eighth
10 Amendment excessive force claim against Doe Defendant(s) and his failure to protect claim
11 against defendant MeDina.

12 These findings and recommendations will be submitted to the United States district
13 judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
14 **fourteen (14) days** after being served with these findings and recommendations, Plaintiff may
15 file written objections with the Court. The document should be captioned “Objections to
16 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
17 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
18 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
19 (9th Cir. 1991)).

20 Additionally, IT IS ORDERED that the Clerk of Court is directed to assign a district
21 judge to this case.
22 IT IS SO ORDERED.

23 Dated: August 15, 2022

24 /s/ Eric P. Gray
25 UNITED STATES MAGISTRATE JUDGE
26
27
28