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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARQUISE LOUIS DRUMWRIGHT,
Plaintiff,
v.
C. HUCKLEBERRY, et al.,
Defendants.

Case No.: 1:22-cv-01410-SKO (PC)

**FINDINGS AND RECOMMENDATIONS TO
DISMISS CERTAIN CLAIMS AND
DEFENDANT HUCKLEBERRY**

14-DAY OBJECTION DEADLINE

Clerk of the Court to Assign District Judge

Plaintiff Marquise Louis Drumwright is proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

I. INTRODUCTION

The Court issued its First Screening Order on July 5, 2023. (Doc. 11.) The Court found Plaintiff's complaint stated Eighth Amendment failure to protect (claim one) and excessive force (claim two) claims, and a First Amendment retaliation claim (claim three), against Defendant Gomez. (*Id.* at 9.) It also found the complaint failed to state any other cognizable claim against any other defendant. (*Id.*) Plaintiff was directed to elect one of three options within 21 days: (1) notify the Court in writing that he does not wish to file a first amended complaint and he is willing to proceed only on the claims found cognizable by the Court; (2) file a first amended complaint curing the deficiencies identified by the Court in the screening order; or (3) file a notice of voluntary dismissal. (*Id.* at 10.)

1 On July 21, 2023, Plaintiff a Notice to Proceed on the Cognizable Claims Identified by the
2 Court. (Doc. 12.) Plaintiff indicated he does not wish to file a first amended complaint and wishes
3 to proceed on his cognizable Eighth and First Amendment claims against Defendant Gomez. (*Id.*)

4 **II. CONCLUSION AND RECOMMENDATION**

5 Accordingly, the Clerk of the Court is directed to randomly assign a district judge to this
6 action. Further, and for the reasons set forth in the Court’s First Screening Order (Doc. 11), the
7 Court **RECOMMENDS** that:

- 8 1. Defendant C. Huckleberry be **DISMISSED** from this action; and,
9 2. The action **PROCEED** on the Eighth Amendment failure to protect claim against
10 Defendant Gomez (claim one), the Eighth Amendment excessive force claim against
11 Defendant Gomez (claim two), and the First Amendment retaliation claim against
12 Defendant Gomez (claim three), as alleged in Plaintiff’s complaint; the remaining
13 claims to be dismissed.

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

21
22 IT IS SO ORDERED.

23 Dated: July 25, 2023

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE