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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 KENNETH MACKEY,
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12 Plaintiff,

13 v.

14 E. GARCIA, et al.,

15 Defendants.

Case No. 1:23-cv-00337-EPG (PC)

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT CERTAIN
CLAIMS AND DEFENDANTS BE
DISMISSED

(ECF Nos. 1 & 8)

OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN DAYS

ORDER DIRECTING CLERK TO ASSIGN
DISTRICT JUDGE

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18 Kenneth Mackey (“Plaintiff”) is a prisoner proceeding *pro se* and *in forma pauperis* in
19 this civil rights action filed pursuant to 42 U.S.C. § 1983.

20 Plaintiff filed the complaint commencing this action on March 7, 2023. (ECF No. 1).
21 The Court screened Plaintiff’s complaint. (ECF No. 8). The Court found that only the
22 following claims should proceed past the screening stage: Plaintiff’s claim for excessive force
23 in violation of the Eighth Amendment against Defendant Garcia and Plaintiff’s claim for
24 retaliation in violation of the First Amendment against Defendant Quintero. (*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 Plaintiff’s claim for excessive force in violation of the Eighth
28 Amendment against Defendant Garcia, and Plaintiff’s claim for retaliation in violation of the

1 First Amendment against Defendant Quintero; or c. Notify the Court in writing that he wants to
2 stand on his complaint.” (Id. at 11-12). On July 25, 2023, Plaintiff filed a notice that he wants
3 to proceed only on the claims that the Court found should proceed past screening. (ECF No. 9).

4 Accordingly, for the reasons set forth in the Court’s screening order that was entered on
5 June 26, 2023 (ECF No. 8), and because Plaintiff has notified the Court that he wants to
6 proceed only on the claims that the Court found should proceed past screening (ECF No. 9), it
7 is HEREBY RECOMMENDED that all claims and defendants be dismissed, except for
8 Plaintiff’s claim for excessive force in violation of the Eighth Amendment against Defendant
9 Garcia and Plaintiff’s claim for retaliation in violation of the First Amendment against
10 Defendant Quintero.

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

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

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22 IT IS SO ORDERED.

23 Dated: July 26, 2023

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