UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

DURRELL ANTHONY PUCKETT,

Plaintiff,

v.

S. SWEIS, et al.,

Defendants.

No. 2:15-cv-0602 TLN AC P

ORDER AND FINDINGS AND RECOMMENDATIONS

Defendants Bivens, Bracho, Compton, Forester, Lightfield, Ramussen, and Sweis request clarification of the September 29, 2017 screening order (ECF No. 25). ECF No. 32. Defendants correctly point out that while the order dismissed the retaliation claims against Gomez, it failed to order service on the failure to protect claim, even though it was found to be viable. Id. They seek clarification as to whether Gomez remains a defendant. Id. The motion will be granted.

As set forth in the September 29, 2017 screening order, plaintiff alleged sufficient facts to state a claim for failure to protect against defendant Gomez. ECF No. 25 at 3-4. Defendant Gomez will therefore be required to respond to that portion of the complaint and the court will order service. Moreover, in light of the Ninth Circuit's recent decision in Williams v. King, 875 F.3d 500 (9th Cir. 2017), the dismissal of the retaliation claim against Gomez is vacated and for the reasons outlined in the September 29, 2017 screening order, the undersigned will recommend to the assigned District Judge that the retaliation claim against defendant Gomez be dismissed

without leave to amend.

Accordingly, IT IS HEREBY ORDERED that:

1. Defendants' request for clarification (ECF No. 32) is granted.

2. The dismissal of the retaliation claim against defendant Gomez (ECF No. 25 at 7) is vacated.

3. Service is appropriate for defendant Gomez and he will be required to respond to the first amended complaint as set forth in Section III.A.2 of the September 29, 2017 screening order (ECF No. 25).

4. The Clerk of the Court shall send plaintiff one USM-285 form, one summons, an instruction sheet, and a copy of the first amended complaint (ECF No. 17).

5. Within thirty days from the date of this order, plaintiff shall complete the attached Notice of Submission of Documents and submit the following documents to the court:

a. The completed Notice of Submission of Documents;

b. One completed summons;

c. One completed USM-285 form for defendant Gomez; and

d. Two copies of the endorsed first amended complaint.

6. Plaintiff need not attempt service on defendant and need not request waiver of service. Upon receipt of the above-described documents, the court will direct the United States Marshal to serve defendant Gomez pursuant to Federal Rule of Civil Procedure 4 without payment of costs.

IT IS FURTHER RECOMMENDED that the retaliation claim against defendant Gomez be dismissed without leave to amend for the reasons set forth in the September 29, 2017 screening order (ECF No. 25 at 2-3).

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within twenty-one days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any response to the objections shall be served and filed within fourteen days after service of the objections. The

parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED

DATED: January 30, 2018

ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

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S. SWEIS, et al.,

Defendants.

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NOTICE OF SUBMISSION OF DOCUMENTS

Plaintiff submits the following documents in compliance with the court's order filed _____:

1 completed summons form

1 completed form USM-285

2 copies of the first amended complaint

DATED:

_____
Plaintiff