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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TORIBIO MENDOZA,
Plaintiff,
v.
SPADARO, et al.,
Defendants.

No. 2:16-cv-0855 KJM CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff is a California prisoner proceeding pro se with an action for violation of civil rights under 42 U.S.C. § 1983. On May 11, 2016, the court screened plaintiff’s complaint as the court is required to do under 28 U.S.C. § 1915A. The court found that plaintiff’s complaint states claims upon which plaintiff may proceed under the Eighth Amendment against defendants Spadaro and Boyt. The court dismissed all other defendants and claims. In a footnote, the court explained:

Plaintiff names “Doe” defendants in his complaint. If plaintiff learns of the identities of other defendants during the course of this action, possibly through discovery, he may seek leave to file an amended complaint. Also, plaintiff asserts claims against certain persons merely in their capacity as supervisors. However, liability under section 1983 arises only upon a showing of personal participation by the defendant. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff does not point to facts suggesting the required level of participation.

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1 On December 5, 2016, the court dismissed defendant Boyt because plaintiff was unable to
2 provide the court with information necessary for the U.S. Marshal to serve Boyt with process.

3 In Williams v. King, 875 F.3d 500, 503-04 (9th Cir. 2017) the Ninth Circuit found
4 magistrate judges do not have authority to dismiss any named defendant from a case unless that
5 defendant has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c) even if
6 the defendant has not been served with process nor screened in pursuant to 28 U.S.C. § 1915A(a).
7 In light of Williams, the court will vacate its dismissal orders and then recommend that all
8 defendants and claims other than a claim arising under the Eighth Amendment against defendant
9 Spadaro be dismissed.

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. The court's May 11, 2016 order that all defendants other than defendants Spadaro and
12 Boyt be dismissed is vacated.

13 2. The court's December 5, 2016 order that defendant Boyt be dismissed is vacated.

14 IT IS HEREBY RECOMMENDED that all defendants and claims other than a claim
15 arising under the Eighth Amendment against defendant Spadaro be dismissed.

16 These findings and recommendations are submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
18 after being served with these findings and recommendations, any party may file written
19 objections with the court and serve a copy on all parties. Such a document should be captioned
20 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
21 objections shall be served and filed within fourteen days after service of the objections. The
22 parties are advised that failure to file objections within the specified time may waive the right to
23 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 Dated: June 4, 2018

25 
26 CAROLYN K. DELANEY
27 UNITED STATES MAGISTRATE JUDGE