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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONNIE GOLDMAS,
Plaintiff,
v.
L. VAN WEGEN, et al.,
Defendants.

No. 2:16-cv-3009 JAM DB P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action under 42 U.S.C. § 1983. On April 3, 2017, plaintiff’s complaint was screened and found to state a First Amendment retaliation claim against Correctional Officer (“CO”) Bacerra, CO Lo, and Sgt. Van Wegen; and an Eighth Amendment excessive force claim against CO Bacerra and Sgt. Van Wegen. Plaintiff was then directed to file either a first amended complaint or a notice of his willingness to proceed on the complaint as screened.

When plaintiff failed to respond, an order to show cause issued directing plaintiff to explain why this action should not be dismissed for his failure to comply with a court order. In response, plaintiff filed a letter claiming that he was transferred to another institution for mental health care, and he does not have access to resources for this case. (ECF No. 11.) Based on these representations, the undersigned recommended that this action be stayed pending a change in plaintiff’s circumstances. (ECF No. 12.) Plaintiff has since been transferred to California Medical

1 Facility in Vacaville, California, and it appears that he is ready to proceed with this action. (ECF
2 No. 14.) Accordingly, the recommendation to stay this case will be vacated.

3 Plaintiff also filed a letter on September 1, 2017, the contents of which are reproduced
4 here in their entirety:

5 I agree with the court and I will dismiss all other charges except
6 excessive force as to your judgement was rendered [*sic*]. What ever
7 forms are need[ed] to reflect my decision to not amend complaint.
Thank you for your time & help.

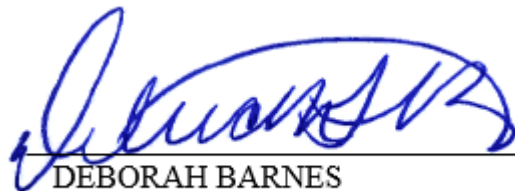
8 (ECF No. 13.)

9 It is unclear what plaintiff intends by way of this letter. As noted supra, plaintiff's
10 complaint was found to state a First Amendment retaliation claim against CO Bacerra, CO Lo,
11 and Sgt. Van Wegen; and an Eighth Amendment excessive force claim against CO Bacerra and
12 Sgt. Van Wegen. Plaintiff's letter suggests that he wishes to proceed on the complaint as
13 screened, which includes both a First Amendment retaliation claim and an Eighth Amendment
14 excessive force claim. Alternatively, the letter can be construed as a dismissal of all of his claims
15 except his Eighth Amendment excessive force claim.

16 In light of these alternative interpretations, IT IS HEREBY ORDERED that:

- 17 1. The July 27, 2017, findings and recommendations (ECF No. 12) are VACATED; and
- 18 2. Plaintiff shall submit a letter within twenty-one (21) days from the date of this order
19 clarifying whether he is willing to proceed on the complaint as screened or whether he
20 wishes to dismiss all of his claims except his Eighth Amendment excessive force
21 claim against CO Bacerra and Sgt. Van Wegen. Failure to comply with this order may
22 result in a recommendation to dismiss this action with prejudice.

23 Dated: September 13, 2017

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26 DEBORAH BARNES
27 UNITED STATES MAGISTRATE JUDGE

28 /DLB7;
DB/Inbox/Substantive/gold3009.stay.fr