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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT MCINNIS,  
Plaintiff,  
v.  
VAUGHN, et al.,  
Defendants.

No. 2:17-cv-1318 CKD P

ORDER AND  
FINDINGS AND RECOMMENDATIONS

Plaintiff is a California prisoner proceeding pro se. The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court screened plaintiff's original complaint on November 16, 2017. The court found that plaintiff's complaint states a claim against defendant Herrera upon which relief could be granted arising under the Eighth Amendment for excessive force as alleged by plaintiff in claim II. The court also found that in all other respects, plaintiff's complaint fails to state claims upon which relief can be granted.

The court gave plaintiff two options: 1) either proceed only on the claim identified above; or 2) attempt to cure the deficiencies with respect to other claims in an amended complaint. The time allotted to plaintiff for the filing of an amended complaint has expired.

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Accordingly, IT IS HEREBY ORDERED that:

1. Service is appropriate for defendant Herrera;
2. The Clerk of the Court shall send plaintiff a USM-285 form, one summons, an instruction sheet and a copy of the complaint.
3. 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; and
- d. two copies of the complaint.

4. Plaintiff need not attempt service on defendant Herrera 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 Herrera pursuant to Federal Rule of Civil Procedure 4 without payment of costs.

5. The Clerk of the Court assign a district court judge to this case.

IT IS HEREBY RECOMMENDED that all defendants and claims other than plaintiff's claim for excessive force arising under the Eighth Amendment against defendant Herrera as alleged by plaintiff in claim II of his complaint be dismissed.

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)(1). Within fourteen after being served with these findings and recommendations, plaintiff may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time

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1 waives the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.  
2 1991).

3 Dated: April 25, 2018



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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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No. 2:17-cv-1318 CKD P

NOTICE OF SUBMISSION  
OF DOCUMENTS

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

- \_\_\_\_\_:
- \_\_\_\_\_ completed summons form
  - \_\_\_\_\_ completed USM-285 forms
  - \_\_\_\_\_ copies of the \_\_\_\_\_  
Complaint

DATED:

\_\_\_\_\_  
Plaintiff