



1 Amendment. See ECF No. 20 at 3-4. However, for the reasons previously addressed by the court  
2 in plaintiff’s myriad cases, plaintiff’s allegations do not state a cognizable Fourth Amendment  
3 claim.<sup>1</sup>

4 Nor does the FAC state a cognizable claim against newly named defendant Xavier  
5 Becerra, the California Attorney General. The FAC fails to make any specific charging  
6 allegations against Becerra, other than his alleged failure to enforce Proposition 57 (the  
7 “California Parole for Non-Violent Criminals” initiative passed in 2016). See ECF No. 22 at 6.  
8 The Attorney General is immune from suit under the circumstances challenged by plaintiff. The  
9 California Attorney General is absolutely immune for Section 1983 damages liability for  
10 initiating prosecutions and presenting the State’s case in defense. See Imbler v. Pachtman, 424  
11 U.S. 409, 431 (1976). Moreover, this immunity extends to the Attorney General’s administrative  
12 responsibilities. See Cousins v. Lockyer, 568 F.3d 1063, 1069 (9th Cir. 2009).

13 Finally, the court has reviewed plaintiff’s several miscellaneous filings (ECF Nos. 23, 24  
14 & 26) and finds none relevant to the factual or legal issues in this case. Plaintiff is admonished to  
15 refrain from filing documents in this action unless they are authorized by Federal Rules of Civil  
16 Procedure or directed by the court. The filing of further irrelevant and frivolous documents in  
17 this action may result in the imposition of sanctions. See Local Rule 110 (“Failure . . . of a party  
18 to comply with these [Local] Rules or with any order of the Court may be grounds for imposition  
19 by the Court of any and all sanctions authorized by statute or Rule or within the inherent power of  
20 the Court.”).

21 Accordingly, for the foregoing reasons, IT IS HEREBY ORDERED that:

22 1. This action shall proceed on plaintiff’s First Amended Complaint filed October 5, 2018  
23 (ECF No. 22), on plaintiff’s excessive force claim against defendant Eliston, for whom service of  
24 process is appropriate.

25 2. The Clerk of Court is directed to send plaintiff one USM-285 form, one summons, an  
26 instruction sheet, and one copy of the endorsed FAC.

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28 <sup>1</sup> See e.g. ECF No. 20 at 5 (noting the “more than forty other cases plaintiff has filed in this  
Court . . . challeng[ing] his arrest and the underlying warrant”).

1           3. Within thirty (30) days after service of this order, plaintiff shall complete the attached  
2 Notice of Submission of Documents and submit the following documents to the court:

- 3           a. The completed Notice of Submission of Documents;  
4           b. One completed summons;  
5           c. One completed USM-285 form; and  
6           d. Two copies of the endorsed FAC (the Marshal will retain one copy).

7           4. Plaintiff shall not attempt service on any defendant or request a waiver of service.

8           Upon receipt of the above-described documents, the court will direct the United States Marshal to  
9 serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4 without payment  
10 of costs.

11           5. Failure of plaintiff to timely comply with this order will result in the dismissal of this  
12 action without prejudice.

13           Additionally, for the reasons set forth above, IT IS HEREBY RECOMMENDED that  
14 putative defendant California Attorney General Xavier Becerra be dismissed from this action with  
15 prejudice.

16           These findings and recommendations are submitted to the United States District Judge  
17 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
18 days after being served with these findings and recommendations, plaintiff may file written  
19 objections with the court. Such document should be captioned "Objections to Magistrate Judge's  
20 Findings and Recommendations." Plaintiff is advised that failure to file objections within the  
21 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
22 F.2d 1153 (9th Cir. 1991).

23 DATED: December 11, 2018

24   
25 ALLISON CLAIRE  
26 UNITED STATES MAGISTRATE JUDGE  
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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JON HUMES,  
  
Plaintiff,  
  
v.  
  
ELISTON, et al.,  
  
Defendants.

No. 2:17-cv-2650 JAM AC P

NOTICE OF SUBMISSION OF  
DOCUMENTS

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

\_\_\_\_\_:

- \_\_\_\_\_ one completed summons form
- \_\_\_\_\_ one completed USM-285 form
- \_\_\_\_\_ two copies of the endorsed FAC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Plaintiff