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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SAMUEL SALDANA,
Plaintiff,
v.
M.E. SPEARMAN, et al.,
Defendants.

No. 2:19-cv-0916 CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. On March 16, 2020, the court screened plaintiff’s amended complaint as the court is required to do under 28 U.S.C. § 1915A(a). Plaintiff’s amended complaint was dismissed with leave to amend and plaintiff was given instructions as to the contents of his second amended complaint. Plaintiff has filed a second amended complaint which now must be screened.

As plaintiff now knows, the court must dismiss a complaint or portion thereof if a prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

Although the facts alleged by plaintiff in claim 1 of his second amended complaint are adequate to state a claim for excessive force under the Eighth Amendment, plaintiff only

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1 identifies the person committing the alleged violation as “John Doe.” The court cannot allow the
2 case to proceed with only a “John Doe” defendant as the next step in this lawsuit would be to
3 serve process upon a defendant. Fed. R. Civ. P. 2. As there is no defendant upon whom process
4 can be served and no discernable method for identifying “John Doe,” this action cannot proceed
5 further. If, at some point, plaintiff learns the identity of “John Doe” he is free to file a second
6 action.

7 In all other respects, the second amended complaint does not assert even arguably
8 actionable claims.

9 In accordance with the above, IT IS HEREBY ORDERED that the Clerk of the Court
10 assign a district court judge to this case.

11 IT IS HEREBY RECOMMENDED that:

- 12 1. Plaintiff’s second amended complaint be dismissed; and
- 13 2. This case be closed.

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

21 Dated: April 14, 2020



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE