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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL EUZELLE JACQUES,
Plaintiff,
v.
ELLIS, et al.,
Defendants.

No. 2:23-cv-00080-EFB (PC)

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel and in forma pauperis in this action brought under 42 U.S.C. § 1983. On August 18, 2023, the court found that plaintiff’s first amended complaint had stated potentially cognizable claims against defendants Ellis and Lomas for violation of the First Amendment and against defendant Hurd for violation of the Fourth Amendment. ECF No. 17. The court dismissed all other claims with leave to file an amended complaint within 30 days. *Id.* The court directed plaintiff to return, within 30 days, a notice informing the court of whether he wished to proceed on the potentially cognizable claims in the first amended complaint or to delay serving any defendant and file a second amended complaint. *Id.* The time for returning the notice and/or filing a second amended complaint has passed, and plaintiff has filed neither.

Accordingly, it is hereby ORDERED that the Clerk of Court randomly assign a District Judge to this action. It is further RECOMMENDED that plaintiff’s First Amendment retaliation

1 claim against defendants Hurd and Steffensmeier and his Fourth and/or Eighth Amendment claim
2 against defendant Steffensmeier be dismissed for failure to state a claim. The court will direct
3 service of the first amended complaint on defendants Hurd, Lomas, and Ellis upon adoption of
4 this recommendation by the District Judge.

5 These findings and recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
7 after being served with these findings and recommendations, any party may file written
8 objections with the court and serve a copy on all parties. Such a document should be captioned
9 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
10 objections shall be served and filed within fourteen days after service of the objections. The
11 parties are advised that failure to file objections within the specified time may waive the right to
12 appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*
13 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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15 Dated: November 28, 2023


16 EDMUND F. BRENNAN
17 UNITED STATES MAGISTRATE JUDGE
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