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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JABIR SADIQ,

Plaintiff,

No. CIV S-09-1171 LKK EFB P

vs.

LT. ROBERTS, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a prisoner without counsel suing for alleged civil rights violations. *See* 42 U.S.C. § 1983. By order filed July 2, 2010, the court found that plaintiff had stated a cognizable excessive force claim against defendants Roberts, Botkin and Fanning, and informed plaintiff he could proceed against those defendants on an excessive force claim only or file an amended complaint to attempt to state an additional cognizable claim against Roberts, as well as cognizable claims against Flores, Scavetta and Ferguson. The court also informed plaintiff that it would consider plaintiff’s decision to proceed only as to defendants Roberts, Botkin and Fanning on the excessive force claim, as consent to the dismissal of his due process claim against Roberts, as well as his claims against Flores, Scavetta, and Ferguson. On July 27, 2010, plaintiff returned documents for service against defendants Roberts, Botkin and Fanning.

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1 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's due process claim
2 against Roberts, as well as his claims against defendants Flores, Scavetta and Ferguson be
3 dismissed without prejudice.

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

11 Dated: August 5, 2010.

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13 EDMUND F. BRENNAN
14 UNITED STATES MAGISTRATE JUDGE
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