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7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA  
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10 JAQUES FEARANCE,

11 Plaintiff,

12 vs.

13 L. L. SCHULTEIS, et al.,

14 Defendants.

1:08-cv-00615-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS ACTION  
PROCEED ONLY AGAINST DEFENDANTS  
HOPKINS, BUSBY, DAVIS, DUFFY, AND  
BECKETT, AND THAT ALL OTHER  
CLAIMS AND DEFENDANTS BE  
DISMISSED

OBJECTIONS, IF ANY, DUE IN 30 DAYS

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17 Jaques Fearence (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis  
18 with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint  
19 commencing this action on May 1, 2008. (Doc. 1.) The case now proceeds on the Third  
20 Amended Complaint filed by Plaintiff on November 22, 2013. (Doc. 64.) The Third Amended  
21 Complaint names as defendants Lieutenant S. Hopkins, J. Busby, T.C. Davis, D. Duffy, and  
22 J.M. Beckett, and alleges various claims including excessive force, failure to protect, verbal  
23 harassment, and conspiracy.

24 The court screened the Third Amended Complaint and found viable claims against  
25 defendants Hopkins and Busby for use of excessive force, against defendants Hopkins, Davis,  
26 Duffy, and Beckett for failure to protect Plaintiff and against defendants Hopkins, Busby,  
27 Davis, Duffy, and Beckett for conspiracy to use excessive force. The court also found that this  
28 is a damages only action.

1 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 2 1. This action proceed only against defendants Hopkins and Busby for use of  
3 excessive force, against defendants Hopkins, Davis, Duffy, and Beckett for  
4 failure to protect Plaintiff, and against defendants Hopkins, Busby, Davis,  
5 Duffy, and Beckett for conspiracy to use excessive force.;
- 6 2. All remaining claims and defendants be dismissed from this action; and
- 7 3. Plaintiff's claims for verbal harassment and injunctive relief be dismissed from  
8 this action based on Plaintiff's failure to state a claim under § 1983.

9 These Findings and Recommendations will be submitted to the United States District  
10 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
11 thirty (30) days after being served with these Findings and Recommendations, any party may  
12 file written objections with the Court. The document should be captioned "Objections to  
13 Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be  
14 served and filed within ten days after service of the objections. The parties are advised that  
15 failure to file objections within the specified time may waive the right to appeal the District  
16 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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19 IT IS SO ORDERED.

20 Dated: December 5, 2013

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE