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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

GARRISON S. JOHNSON,

Plaintiff,

v.

JOHN DOVEY, et al.,

Defendants.

CASE NO. 1:08-CV-00640-LJO-DLB PC

ORDER ADOPTING FINDINGS AND  
RECOMMENDATION AND DENYING  
PLAINTIFF’S MOTION FOR SUMMARY  
JUDGMENT (DOC. 112)

Plaintiff Garrison S. Johnson (“plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On July 26, 2010, Plaintiff filed a [motion](#) for summary judgment. Docs. [76](#), [77](#), [78](#), [80](#). The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 11, 2011, the Magistrate Judge filed a [Findings and Recommendations](#) which was served on the parties and which contained notice to the parties that any objection to the Findings and Recommendations was to be filed within twenty-one days. Plaintiff filed an [Objection](#) to the Findings and Recommendations on February 28, 2011.<sup>1</sup>

In accordance with the provisions of 28 U.S.C. § 636(b)(1), this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis.

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<sup>1</sup> Plaintiff also moves for reconsideration of the Magistrate Judge’s order denying appointment of an expert witness. The Court will adjudicate the motion by separate order.

1 Plaintiff's primary argument is that the evidence, namely the crime incident reports, indicates  
2 that excessive force was used. However, that evidence at best demonstrates that force was used, not  
3 whether it was excessive in violation of the Eighth Amendment. *See Hudson v. McMillian*, 503 U.S.  
4 1, 7-9 (1992). Construing the facts in the light most favorable to the non-moving party, *Matsushita*  
5 *Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986), the Court finds that there is a  
6 triable issue of material fact as to Plaintiff's claims.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The Findings and Recommendations, filed February 11, 2011, is adopted in full;
- 9 2. Plaintiff's motion for summary judgment, filed July 26, 2010, is denied; and
- 10 3. The matter is referred to the magistrate judge for further proceedings.

11 IT IS SO ORDERED.

12 **Dated:** March 22, 2011

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE