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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
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8 KEVIN GUNN,

9 Plaintiff

10 v.

11 JAMES TILTON, et al.,

12 Defendants.

CASE No. 1:08-cv-01038-LJO-SAB (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS,
RECOMMENDING GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

(ECF Nos. 41 & 114)

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14 Plaintiff Kevin Gunn ("Plaintiff"), is a state prisoner proceeding pro se and in forma
15 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding against
16 Defendants Nunley and Medina for excessive force in violation of the Eighth Amendment and
17 against Defendants Medina, Nunley, Coontz, Phipps, and Robb for conspiracy to violate
18 Plaintiff's due process rights. The matter was referred to a United States Magistrate Judge
19 pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

20 On May 19, 2010, Defendants filed a motion for summary judgment. (ECF No. 41.)
21 Defendants' motion for summary judgment addresses only the claim for conspiracy to deprive
22 Plaintiff of his due process rights. On June 10, 2013, the Magistrate Judge issued a findings and
23 recommendation recommending granting Defendants' motion for summary judgment. (ECF No.
24 114.) Neither party filed any objections to the findings and recommendations.

25 Pursuant to 28 U.S.C. § 636(b)(1)(C), the Court has conducted a de novo review of this
26 case. Having carefully reviewed the entire file, the Court finds the findings and recommendations
27 to be supported by the record and by proper analysis.

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1 Accordingly, it is HEREBY ORDERED that:

- 2 1. The Court adopts the findings and recommendations filed on June 10, 2013, in full;
- 3 2. The conspiracy to violate Plaintiff's due process rights claim is dismissed and
- 4 Defendants Coontz, Phipps, and Robb are dismissed from this action;
- 5 3. The excessive force claim shall proceed to trial against Defendants Nunley and
- 6 Medina; and
- 7 4. This matter is referred back to the Magistrate for scheduling purposes.

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10 IT IS SO ORDERED.

11 Dated: August 16, 2013

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