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

ROBERT BALTIMORE,  <p style="text-align: center;">v.</p> CHRISTOPHER HAGGINS,  	Plaintiff,   Defendant.
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Case No. 1:10-cv-00931-AWI-JLT (PC)  <b>ORDER ADOPTING FINDINGS AND RECOMMENDATIONS DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT.</b>  (Doc. 34)
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Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. In this matter, Plaintiff alleges a cause of action based on his claim that on October 22, 2009, he was subjected to excessive force in violation of the Eighth Amendment by Defendant. Defendant filed a motion for summary judgment on April 19, 2012. (Doc. 30). Plaintiff filed an Opposition on May 9, 2012 (Doc. 32) and Defendant has replied (Doc. 33). The matter was referred to United States Magistrate Judge Jennifer L. Thurston pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rules 302 and 303.

On October 23, 2012, Magistrate Judge Thurston issued Findings and Recommendations denying Defendant's motion for summary judgment. (Doc. 34). Defendant filed objections to the Findings and Recommendations on November 6, 2012. (Doc. 35). In his objections, Defendant Haggins reiterates his position that the use of his baton to subdue Plaintiff was appropriate under

1 the circumstances and argues that the Magistrate Judge's Findings and Recommendations do not  
2 afford the proper deference due a correctional officer.

3 In regard to Plaintiff's Eighth Amendment excessive force claim against Defendant  
4 Haggins, the Findings and Recommendations cited evidence presented by Plaintiff which raised  
5 genuine issues of material fact. (Doc. 34 at 3-4). Based upon the evidence presented and the two  
6 completely different versions of events described by the parties, the Magistrate Judge properly  
7 recommended that Defendant Haggins' motion for summary judgment be denied. Given  
8 Plaintiff's handcuffed and undressed state, the Court cannot conclude as Defendant does that  
9 supporting testimony of two fellow officers that is at odds with Plaintiff's version of events  
10 entitles Defendant to judgment as a matter of law. For the same reason, nor can the Court agree  
11 with Defendant's contention that the Magistrate Judge's Findings did not afford Defendant the  
12 proper deference.

13 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Britt v. Simi Valley  
14 United School Dist., 708 F.2d 452, 454 (9<sup>th</sup> Cir. 1983), the Court has conducted a de novo review  
15 of the case. Having carefully, reviewed the entire file, the Court finds that the Findings and  
16 Recommendations are supported by the record and by proper analysis.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. The Findings and Recommendations filed October 23, 2012 are **ADOPTED IN**  
19 **FULL**; and
- 20 2. The Motion for Summary Judgment filed by Defendant Haggins is **DENIED**.

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23 IT IS SO ORDERED.

24  
25 Dated: November 16, 2012

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