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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 ROBERTO M. GARCIA, JR.,

12 Plaintiff,

13 vs.

14 MATTHEW M. JUAREZ, JR.,

15 Defendant.  
16

1:12-cv-00750-AWI-GSA-PC

FINDINGS AND RECOMMENDATIONS  
FOR THIS CASE TO PROCEED ONLY  
AGAINST DEFENDANT JUAREZ FOR  
USE OF EXCESSIVE FORCE, AND  
DISMISSING ALL OTHER CLAIMS

OBJECTIONS, IF ANY, DUE IN  
**TWENTY (20) DAYS**

17 Roberto M. Garcia, Jr. ("Plaintiff") is a state prisoner proceeding pro se and in forma  
18 pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint  
19 commencing this action on May 8, 2012. (Doc. 1.) Plaintiff filed the First Amended  
20 Complaint on June 14, 2013. (Doc. 11.) The First Amended Complaint named one defendant,  
21 Sergeant Matthew M. Juarez, Jr., and brought claims for use of excessive force and violation of  
22 equal protection.

23 The court screened the First Amended Complaint pursuant to 28 U.S.C. 1915A and  
24 entered an order on February 24, 2014, for Plaintiff to either file a Second Amended Complaint  
25 or notify the court that he is willing to proceed only on the claims found cognizable by the  
26 court. (Doc. 16.) On March 24, 2014, Plaintiff filed a notice informing the court that he is  
27 willing to proceed only on the cognizable Eighth Amendment excessive force claim against  
28 defendant Juarez, and does not wish to file a Second Amended Complaint. (Doc. 17.)

1 Therefore, the court **HEREBY RECOMMENDS** that:

- 2 1. This case proceed on the First Amended Complaint against defendant Juarez for  
3 use of excessive force in violation of the Eighth Amendment;
- 4 2. All other claims be dismissed from this action;
- 5 3. Plaintiff's equal protection claim be dismissed from this action; and
- 6 4. This case be referred back to the Magistrate Judge for further proceedings,  
7 including initiation of service of process.

8 These findings and recommendations are submitted to the United States District Judge  
9 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty**  
10 **(20) days** after being served with these findings and recommendations, Plaintiff may file  
11 written objections with the court. Such a document should be captioned "Objections to  
12 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
13 objections within the specified time may waive the right to appeal the District Court's order.  
14 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 IT IS SO ORDERED.

16 Dated: March 28, 2014

17 /s/ Gary S. Austin  
18 UNITED STATES MAGISTRATE JUDGE