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3 **UNITED STATES DISTRICT COURT**

4 EASTERN DISTRICT OF CALIFORNIA

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8 MYRON A. PAYNE,) 1:13cv2079 AWI DLB PC
9 Plaintiff,)
10 vs.) ORDER ADOPTING FINDINGS
11 FUJIOKA, et al.,) AND RECOMMENDATIONS AND
12 Defendants.) DISMISSING CERTAIN CLAIMS
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_____)

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14 Plaintiff Myron A. Payne (“Plaintiff”) is a state prisoner proceeding pro se and in forma
15 pauperis in this civil rights action. Plaintiff filed this action on December 23, 2013. The matter
16 was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local
17 Rule 302.

18 On October 17, 2014, pursuant to Plaintiff’s notice that he wished to proceed only on the
19 cognizable claims, the Court issued [Findings and Recommendations](#) that the action proceed
20 against Defendants Fujioka, Rodriguez and Gipson for violation of procedural due process, and
21 that all further claims be dismissed.¹

22 On November 24, 2014, despite his prior notification to proceed only on the cognizable
23 claims, Plaintiff submitted [objections](#) to the Findings and Recommendations. Plaintiff’s
24 objections were inconsistent with his willingness to proceed only on the cognizable claims, and
25 the Court ordered Plaintiff to clarify his intent.
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¹ Service documents have been forwarded to the United States Marshal.

1 On December 29, 2014, Plaintiff informed the Court that he wished to proceed only on
2 his cognizable claims.

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

7 In his December 29, 2014, filing, Plaintiff states that he was within his rights to file
8 objections to the Findings and Recommendations. Plaintiff is correct. However, in this instance,
9 the screening order explained that if he wished to proceed only on the cognizable claims, the
10 Court would dismiss the remaining claims by Findings and Recommendations. In other words,
11 Plaintiff's agreement to proceed only on the cognizable claims also indicated that he agreed to
12 dismiss the remaining claims. Plaintiff's objections were not consistent with his agreement to
13 dismiss the claims that were not cognizable under section 1983.
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15 In any event, Plaintiff's objections mainly repeated arguments that he made in his motion
16 for reconsideration of the screening order. The motion was denied on September 19, 2014.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. The Findings and Recommendations, filed October 17, 2014, are adopted in
19 full;
- 20 2. This action shall proceed against Defendants Fujioka, Rodriguez and Gipson for
21 violation of procedural due process; and
- 22 3. All further claims are DISMISSED.
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24 IT IS SO ORDERED.

25 Dated: January 8, 2015

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27 SENIOR DISTRICT JUDGE
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