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

ANTHONY FUIMAONO,

Plaintiff,

No. CIV S-08-1198 FCD EFB P

vs.

FAIRFIELD POLICE
DEPARTMENT, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On June 17, 2010, the court found that the complaint stated the following cognizable claims for relief: (1) against defendants Trojanowski, City of Fairfield, and Rainey for violating his rights under the Fourth Amendment to the United States Constitution in connection with the allegedly excessive force used against him in his arrest and the policies and/or failure to train that caused such excessive force to be used; (2) against currently unknown defendants for violating his rights under the Fifth and Fourteenth Amendments for allegedly failing to provide him with adequate medical treatment; (3) against defendant Trojanowski for assault and battery in violation of California law; and (4) against defendants Trojanowski, City of Fairfield, Rainey, and currently unknown persons for intentional infliction of emotional distress under California law. The court further found that plaintiff had failed to state a

1 cognizable claim for relief against any defendant for violating the Fourteenth Amendment in
2 connection with plaintiff's arrest, failed to state a cognizable claim for deliberate indifference to
3 a serious medical need under the Eighth Amendment and had failed to state a cognizable state-
4 law based "excessive force" claim separate from the state law assault and battery and intentional
5 infliction of emotional distress claims. The court gave plaintiff 30 days to submit materials for
6 service of process on defendants, or, alternatively, 30 days to file an amended complaint to
7 attempt to state cognizable claims under the theories listed above.

8 The times for acting passed and plaintiff did not submit the materials necessary to serve
9 process on defendants, did not file an amended complaint or otherwise respond to the court's
10 order.

11 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without
12 prejudice. *See* Fed. R. Civ. P. 41(b); Local Rule 110.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
15 after being served with these findings and recommendations, any party may file written
16 objections with the court and serve a copy on all parties. Such a document should be captioned
17 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
18 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
19 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

20 DATED: August 26, 2010.

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22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
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