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

JOHN CLINT DRAPER,

Plaintiff,

No. CIV S-10-0032 KJM EFB P

vs.

D. ROSARIO, et al.,

Defendants.

ORDER

_____/

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 9, 2012, the magistrate judge filed findings and recommendations, which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having carefully reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis.

1 Accordingly, IT IS HEREBY ORDERED that:

2 1. The findings and recommendations filed March 9, 2012, are adopted in full;

3 2. Defendants' July 21, 2011 motion to dismiss is DENIED as to plaintiff's
4 Eighth Amendment excessive force claim against defendant Rosario, but GRANTED as to all
5 other claims;

6 3. Plaintiff is granted leave to file an amended complaint within 30 days, curing
7 the deficiencies identified in the magistrate judge's findings and recommendations as to the
8 Fourteenth Amendment claims against Rosario and Fowler and the Eighth Amendment claim
9 against defendant Rallos; **this amended complaint should include the Eighth Amendment**
10 **excessive force claim against Rosario, which the court has found states a claim;** and

11 4. Defendant Rosario is ordered to file an answer to the amended complaint
12 within the time provided in Rule 12 of the Federal Rules of Civil Procedure.

13 DATED: March 30, 2012

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16 UNITED STATES DISTRICT JUDGE
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