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

JOEL HOLLEY,

Plaintiff,

No. CIV S-10-0615 EFB P

vs.

GARY SWARTHOUT, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a prisoner without counsel suing for alleged civil rights violations. *See* 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff's consent. *See* E.D. Cal. Local Rules, Appx. A, at (k)(4).

By order filed October 13, 2010, the court found that plaintiff had stated sufficient charging allegations to state cognizable equal protection claims against defendants, and informed plaintiff he could proceed on those claims only or file an amended complaint that also states a cognizable Eighth Amendment claim. The court also informed plaintiff that the court would consider his decision to proceed only as to his equal protection claims as consent to the dismissal of his defective Eighth Amendment claims. Plaintiff has indicated his consent to the dismissal of his defective Eighth Amendment claim.

1 Accordingly, IT IS HEREBY ORDERED that plaintiff's defective Eighth Amendment
2 claim is dismissed without prejudice.

3 Dated: November 1, 2010.

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5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE
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