

1 “[t]he statute makes it clear that the district judge must review the magistrate judge’s findings
2 and recommendations de novo *if objection is made*, but not otherwise.” *United States v.*
3 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (emphasis in original), *cert*
4 *denied*, 540 U.S. 900 (2003); *see also Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir.
5 2005). “Neither the Constitution nor the statute requires a district judge to review, de novo,
6 findings and recommendations that the parties themselves accept as correct.” *Reyna-Tapia*,
7 328 F.3d at 1121. Accordingly, the Court may grant in part and deny in part Defendants’
8 Motion to Dismiss on this basis alone.

9 In the absence of any objections, the Court fully **ADOPTS** Judge Brooks’ Report and
10 Recommendation. Defendants’ Motion to Dismiss Plaintiff’s second, fifth, and sixth causes
11 of action under the Fourteenth Amendment is **DENIED**. Plaintiff may only assert these
12 allegations to apply the Eighth Amendment to the State of California. Plaintiff’s Fourth
13 Amendment claims for excessive force and deliberate indifference alleged in counts one, two,
14 four, five, and six are **DISMISSED** with prejudice because they are subsumed by the Eighth
15 Amendment. Defendants State of California and California Department of Corrections &
16 Rehabilitation (“CDCR”) are immune from suit under the Eleventh Amendment. For this
17 reason, the Motion to Dismiss the State of California in counts two, four, five, nine, ten, and
18 eleven is **GRANTED** with prejudice. In addition, the Motion to Dismiss Defendant CDCR
19 in counts two, ten, and eleven is **GRANTED** with prejudice. Defendant Warden Uribe’s
20 Motion to Dismiss Plaintiff’s monetary claims against him in count six is **DENIED**. All other
21 claims for monetary damages against Uribe, however, are **DISMISSED**. Finally, the Doe
22 defendants are **DISMISSED** from the Complaint.

23
24 **IT IS SO ORDERED.**

25
26 DATED: July 22, 2011


27 HON. ROGER T. BENITEZ
28 United States District Court Judge