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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GREGORY TYREE BROWN,

Plaintiff,

vs.

BERNARD WARNER, et al.,

Defendants.

No. 2:13-CV-00130-JTR

ORDER ADOPTING REPORT AND
RECOMMENDATION

BEFORE THE COURT is Magistrate Judge Rodgers' April 10, 2014, Report and Recommendation to grant, in part, Defendant's motion to dismiss. ECF No. 17. Plaintiff appears *pro se*. Defendants are represented by Brian James Considine. There being no objections to the Report and Recommendation, the Court adopts the Report and Recommendation in its entirety.

Accordingly, **IT IS HEREBY ORDERED:**

1. The Court **ADOPTS** Magistrate Judge Rodgers' Report and Recommendation, **ECF No. 17**.
2. Defendants' motion to dismiss, **ECF No. 14**, is **GRANTED IN PART and DENIED IN PART**.
3. This case shall proceed on Plaintiff's claim against Defendants Westfall, Shodahl and Cluever for failure to protect in violation of the Eighth Amendment (claim one) and Plaintiff's claims against Defendants Shodahl and

1 Cluever for use of excessive force in violation of the Eighth Amendment (claims
2 four and five).

3 4. A telephonic scheduling conference will be set before Judge Rodgers
4 with respect to the remaining parties and claims. The parties will receive a notice
5 setting the telephonic scheduling conference following the entry of this order.

6 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order
7 and provide a copy to Plaintiff, counsel for Defendants and Magistrate Judge
8 Rodgers.

9 **DATED** this 29th day of April 2014.

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12 *s/ Rosanna Malouf Peterson*
13 ROSANNA MALOUF PETERSON
14 Chief United States District Court Judge
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