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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

CARLOS HERRERA,

Plaintiff,

v.

C. HALL, et al.,

Defendants.

CASE NO. 1:08-cv-01882-LJO-SMS PC

ORDER ADOPTING FINDINGS AND RECOMMENDATIONS AND DENYING DEFENDANT TURELLA’S MOTION FOR SUMMARY JUDGMENT

(ECF Nos. 67, 83)

ORDER DISMISSING CERTAIN CLAIMS AND DEFENDANTS, AND REFERRING MATTER BACK TO MAGISTRATE JUDGE

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**I. Procedural History**

Plaintiff Carlos Herrera (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on the [first amended complaint](#), filed June 19, 2009, against Defendants Lopez, Hall, Grannis, Turella, Penner, Zamora, and Moonga for deliberate indifference to serious medical needs.<sup>1</sup> The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 22, 2011, the Magistrate Judge issued [findings and recommendations](#) recommending that Defendant Turella’s [motion for summary judgment](#) be denied. The parties were granted thirty

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<sup>1</sup>Defendants Dill and Bluford were dismissed from the action for Plaintiff’s failure to effect service of process on August 30, 2010. (ECF No. 65.) Concurrent with this order, an order issued granting Defendants Grannis, Hall, Moonga, and Zamora’s motion for summary judgment and dismissing them from the action.

1 days within which to file objections. Thereafter the Magistrate Judge rescreened the complaint based  
2 upon the decision issued in Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009), and found that Plaintiff's first  
3 amended complaint failed to state a cognizable claim against Defendants Penner or Turella. On June  
4 22, 2011, an order issued requiring Plaintiff to either file an amended complaint or notify the Court  
5 of his willingness to proceed only the claims found cognizable. On July 14, 2011, Plaintiff filed a  
6 notice with the Court that he wished to proceed on the claims found to be cognizable. More than  
7 thirty days have passed and no objections to the findings and recommendations have been filed.

8 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a  
9 de novo review of this case. Having carefully reviewed the entire file, the undersigned finds the  
10 findings and recommendations to be supported by the record and by proper analysis.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The findings and recommendations, filed June 22, 2011, is adopted in full;
- 13 2. Defendant Turella's motion for summary judgment, filed October 27, 2010, is  
14 DENIED;
- 15 3. Defendants Turella and Penner are dismissed from the action, with prejudice, based  
16 upon Plaintiff's failure to state any cognizable claims against them;
- 17 4. This matter is proceeding only on Plaintiff's claims against Defendant Lopez for  
18 deliberate indifference to serious medical needs; and
- 19 5. This matter is referred back to the Magistrate Judge for further proceedings.

20 IT IS SO ORDERED.

21 **Dated:** August 10, 2011

22 /s/ Lawrence J. O'Neill  
23 UNITED STATES DISTRICT JUDGE  
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